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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. ~~372~~ 102

THE COUNTY OF JACKSON, IN THE STATE OF MISSOURI,
PLAINTIFF IN ERROR,

vs.

THE NINTH NATIONAL BANK OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF MISSOURI.

FILED OCTOBER 12, 1885.

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1 UNITED STATES OF AMERICA, *sct:*

The President of the United States to the judges of the circuit court of the United States for the western division of the western district of Missouri, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Ninth National Bank of New York, plaintiff, and The County of Jackson, in the State of Missouri, defendant, a manifest error hath happened, to the great damage of the said The County of Jackson, in the State of Missouri, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court.

Issued at office, in Kansas City, this fourteenth day of August, A. D. 1885.

{ Seal of the United States Circuit Court, Western Division, for the Western District of Missouri. }

H. C. GEISBERG, *Clerk,*
By JOHN M. PARRY, *D. C.*

Allowed:

A. KREKEL, *Judge.*

1½ WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI, *sct:*

I do hereby return due and perfect obedience to the within writ, and do herewith, under the seal of said circuit court, distinctly and openly, send the record and proceedings aforesaid, with all things concerning the same.

Witness my hand, as clerk, and the seal of said court.

Issued at office, in Kansas City, this eighteenth day of September, A. D. 1885.

H. C. GEISBERG, *Clerk,*
By WARREN WATSON,
Deputy Clerk.

[Endorsed:] 448 & 776. United States circuit court, western district of Missouri, western division. Ninth National Bank of New York *vs.* The County of Jackson. Writ of error. Filed August 14th, 1885. H. C. Geisberg, clerk.

2 In the United States Circuit Court for the Western Division of the Western District of Missouri.

NINTH NATIONAL BANK OF NEW YORK, Pl'ff,
against
JACKSON COUNTY, in the State of Missouri, Def't.
} Nos. 448 & 776.

I hereby accept service of notice of the filing of a bond in the sum of five hundred dollars by the said defendant, Jackson County, for the purpose of taking out a writ of error, and also the issuing of said writ of error in the above-entitled cause, returnable on the first day of the next October term of the Supreme Court of the United States, and I also hereby waive the issuing and service of citation on said writ of error.

Witness my hand this 12th day of August, 1885.

J. B. HENDERSON,
Attorney of said Ninth National Bank of New York.

[Endorsed:] 448, 776. Ninth Nat'l Bank *vs.* Jackson County. Filed Sept. 2, 1885. H. C. Geisberg, clerk.

3 Supreme Court of the United States.

NINTH NATIONAL BANK OF THE CITY OF NEW YORK
against
THE COUNTY OF JACKSON, in the State of Missouri.
} No. —.

Error to the circuit court of the United States for the western division of the western district of Missouri.

UNITED STATES OF AMERICA, *sct:*

Pleas and proceedings had before the circuit court of the United States for the western division of the western district of Missouri in a cause wherein The Ninth National Bank of the City of New York is plaintiff and The County of Jackson, in the State of Missouri, is defendant. At law.

4 UNITED STATES OF AMERICA, *sct:*

Be it remembered that heretofore, to wit, on the 24 day of April, 1882, a petition was filed in the office of the clerk of said court in the words and figures following, to wit:

In the United States — Court for the Western Division of the Western District of Missouri. May Term, 1882.

Ninth National Bank of the City of New York, Plaintiff,
against
Jackson County, in the State of Missouri, Defendant.

The plaintiff respectfully represents to the court that it is a banking company, duly incorporated as such under the laws of the United States and under the laws of the State of New York, composed of stockholders resident in the State of New York and citizens thereof, and said bank is located in said State of New York and does business therein and is a citizen of said State of New York; that the defendant is a municipal corporation, composed of citizens of the State of Missouri, the same being a county in said State, and a citizen thereof.

Plaintiff further says that the defendant, on the 4th day of January, A. D. 1871, by its certain writing obligatory, called and known as county bond No. 2, signed by Joshua Petty, then presiding justice of the county court of said county of Jackson, and by E. R. Hickman, then clerk of the county court of said county of Jackson, and sealed with the seal of the county court of said county, which said bond is dated on the 4th day of January, 1871, acknowledged itself indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company, a railroad company then and there duly organized, incorporated, and existing under the laws of the State of Missouri, and proposing then to build a railroad into, through,
5 and near the township of Van Buren, in said county of Jackson, for and on account of Van Buren township, in said county, and promised by said bond to pay to said company or bearer the sum of one thousand dollars at the Bank of America, in New York, with interest thereon from the date of said bond, at the rate of six per cent. per annum, payable semi-annually, on the first days of July and Jan. of each year, on the presentation and delivery at said Bank of America of the coupons of interest thereto attached.

And plaintiff says that in said bond and as a part thereof it is recited and declared that this (the said bond) is issued pursuant to an order of the county court of Jackson county and pursuant to an act of the General Assembly of the State of Missouri, approved March 23rd, 1868, entitled "An act to facilitate the construction of railroads in the State of Missouri."

Plaintiff avers that before the issue of said bond the same was authorized to be issued by two-thirds of the qualified voters of said township at an election duly held for that purpose.

The plaintiff avers that the said county issued, negotiated, and delivered the said bond and coupons attached to said company, for value and in payment of a subscription made by said county in behalf of said township to the capital stock of said railroad company, as hereinafter described, and thereafter caused the necessary taxes to be collected from year to year in said township for the payment of the coupons on said bond and all other bonds of the same issue,

from the date of the issue thereof up to and inclusive of the year 1875, and that all the coupons attached to said bond, including those in the years 1872, 1873, 1874, and 1875, and on the 1st
6 day of Jan., 1876, have been duly and regularly paid, and the said defendant accepted and received certificates of stock for the amount so subscribed to said company, and repeatedly voted said stock at elections of stockholders of said company and in the management and direction thereof.

Plaintiff says further that the aforesaid bond was executed, issued, and delivered to the aforesaid company under and by virtue of the provisions of the said act entitled "An act to facilitate the construction of railroads in the State of Missouri," approved March 23rd, 1868; that according to said act and upon the petition of at least 25 persons, residents and tax-payers of said township, the said county court of said county, previous to August 30th, 1870, ordered an election to be held by the qualified voters of said township, on the said 30th day of August, 1870, to determine whether the county court of said county should subscribe for and in behalf of said township fifty thousand dollars to the capital stock of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, which said last-named railroad company was then duly incorporated and organized with power and authority to construct and operate a railroad into and through said township of Van Buren, and then having special provisions in the charter authorizing said company to consolidate with the Lexington, Chillicothe and Gulf Railroad Company, then incorporated and organized with full power and authority to construct and operate a railroad into and through and near said township, at which said elections so held according to law, and after the required notice, said proposition so to subscribe was approved by more than two-thirds of the qualified voters
7 of said township; whereupon, after said election and in accordance with the vote of the people in that behalf, the county court of said county, as required by law in such cases, on the 1st day of September, 1870, caused to be made a subscription to the capital stock of said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railway Company, and there, the said named company and the Lexington, Chillicothe and Gulf Railroad Company, having power to do so by law and according to special provisions to that effect contained in the charters and articles of association, respectively, of said companies, thereafter consolidated into one company under the name and style of the Lexington, Lake and Gulf Railroad Company, which said last-named company, by virtue of said consolidation, became possessed of and entitled to all the rights, privileges, franchises, assets, subscriptions, monies, bonds, and property of each and both of the two said companies so forming said consolidation, and said consolidated company, by virtue of such consolidation, became authorized and had full power to build and operate a railroad through, into, and near said township of Van Buren aforesaid; and plaintiff says, by virtue of the aforesaid proceedings and as required by law in such cases, the aforesaid bond No. 2

was, as hereinbefore stated, executed by order of said county court and issued and delivered to said last-named railroad company.

And plaintiff avers that in consideration of said bond and of other bonds, dated at the same time and of the same tenor and effect and for the same amount each as the said bond No. 2, which said
county court at the date of the issue of said bonds so issued
8 and delivered to said company, the said county court accepted
from said company a certificate of stock in the capital stock of said company for fifty thousand dollars for and in behalf of said township, which said stock certificate is still held and retained for said township by said county.

And plaintiff avers that the said county court caused this said stock to be voted at all elections for directors and for all other purposes up to and inclusive of the year 1875; and plaintiff says that said county court annually levied taxes upon the tax-payers of said township after the issue of said bonds up to and inclusive of the year 1876, and the people of said township paid the same, and with the proceeds of said taxes the coupons of said bonds and all other bonds issued at the same time were duly paid off and cancelled up to and inclusive of the 1st day of January, 1876.

And now plaintiff comes and says that at the time of issuing said bonds the county court aforesaid, by virtue of the same proceedings hereinbefore recited and for the same purpose and at the same time, issued and delivered to the said consolidated company certain other bonds of like date and of the same tenor and effect and each for the same amount, said bonds being numbered as follows, to wit:

Nos. 8, 9, 34, 43, 44, 41, 40, 39, 29, 42, 38, 30, 1, 17, 19, 12, 14, 11, 10, 5, 6, 13, 25, 24, 45, 3, 26, and 28.

And plaintiff says that all the facts stated and allegations made herein in respect to bond No. 2, hereinbefore described, are applicable to each of the bonds numbered above. The last-named bonds are each identical in form with bond No. 2, except in numbers, for the
same amount and having coupons attached from July 1st,
9 1876, and said bonds — for the same consideration as said bond
No. 2.

And plaintiff says that it is the owner and holder for value of three hundred and forty-seven coupons (347) detached from said bonds, by each of which said coupons the said county, for value, promised to pay to bearer for six months' interest on said bonds, respectively, the sum of thirty dollars at the Bank of America, in the city and State of New York, said coupons being due and payable as follows, to wit:

Twenty-eight of said coupons, one being detached from each of said bonds above mentioned, except bond No. 2, became due and payable on July 1st, 1876.

Twenty-nine of said coupons, one being detached from each of said bonds above mentioned, including No. 2 as aforesaid, became due and payable on the 1st day of January, 1877.

Twenty-nine of said coupons, one being detached from each of the bonds above described, including No. 2 as aforesaid, became due and payable on the 1st day of July, 1877.

Twenty-nine of said coupons, one being detached from each of the bonds last above described as aforesaid, became due and payable on the first day of January, 1878.

Twenty-nine of said coupons, one being detached from each of the bonds last above described, became due and payable on the first day of July, 1878.

Twenty-nine of said coupons, one being detached from each of the bonds above described, including No. 2 as aforesaid, became due and payable on the first day of January, 1879.

Twenty-nine of said coupons, one being detached from each of the bonds above described, including No. 2, became due and payable on the first day of July, 1879.

10 Twenty-nine of said coupons, one being detached from each of the bonds above described, including No. 2, became due and payable on the first day of January, 1880.

Twenty-nine of said coupons, one being detached from each of the bonds above described, including No. 2, became due and payable on the first day of July, 1880.

Twenty-nine of said coupons, one being detached from each of the bonds above described, including No. 2, became due and payable on the first day of January, 1881.

Twenty-nine of said coupons, one being detached from each of the bonds above described, including No. 2, became due and payable on the first day of July, 1881.

Twenty-nine of said coupons, one being detached from each of the bonds above described, including No. 2, became due and payable on the first day of January, 1882.

And plaintiff says that on the respective days of maturity of said coupons it caused the same to be presented for payment at the place where payable and payment demanded, and payment thereof was refused.

Wherefore plaintiff sues and prays judgment for the amount of said coupons, to wit, ten thousand four hundred and ten dollars ($10,410), together with interest, damages, and costs.

J. B. HENDERSON AND
J. M. LEWIS,
Attorneys for Plaintiff.

The coupons filed with said petition are in words and figures as follows, to wit:

11 $30. $30.

CITY OF INDEPENDENCE, JACKSON CO., MO,
Jan'y 4, *A. D.* 1871.

The County of Jackson acknowledges to owe the sum of thirty dollars in gold, payable to bearer, on the 4th day of July, 1876, at the Bank of America, in the city and State of New York, for six months' interest on bond No. 1.

E. R. HICKMAN,
Clerk County Court, Jackson Co., Mo.

(Here follow 347 other coupons (pp. 11 to 60, incl.), omitted in printing, per stipulation. See page 209.)

61 Thereupon a writ of summons was issued as follows, to wit:

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, } *sct:*

The President of the United States of America to the marshal of the United States for the western district of Missouri, Greeting:

You are hereby commanded to summon the County of Jackson, in the State of Missouri and in the western division of the western district thereof, to be and appear before the honorable circuit court of the United States in and for the western division of the western district of Missouri on the first day of the next term thereof, to be begun and holden, at the city of Kansas, in said district, on the 3d Monday, the 15th day of May next, then and there to answer the complaint of the Ninth National Bank of the City of New York, a corporation of the State of New York, as set forth in the petition filed in the office of the clerk of said court on the 21st day of April, A. D. one thousand eight hundred and eighty-two.

Hereof fail not, and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 22 day of April, A. D. eighteen hundred and eighty-two. Issued at office, in the city of Kansas, in said district, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.]

H. C. GEISBERG,
Clerk of said Court,
By WARREN WATSON,
Deputy Clerk.

62 And said writ of summons was duly returned with the following endorsement thereon, to wit:

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, } *sct:*

I do hereby certify that I served the within writ by delivering a true copy thereof, together with a certified copy of the petition filed in the cause, to N. Z. Hickman, clerk of the county court of Jackson county, in his office of county clerk, at Independence, Jackson county, Missouri.

Done in the western division of the western district of Missouri this 25th day of April, 1882.

C. C. ALLEN,
U. S. Marshal, Western District of Missouri,
By R. M. ELLIOTT, *Deputy.*

And afterwards, to wit, at the regular May term, 1882, of said court, and on the 15 day of May, 1882, the following entry appears of record in said cause, to wit:

NINTH NATIONAL BANK OF N. Y.
against
JACKSON COUNTY, MISSOURI.

This day comes the defendant, by its attorney, and files demurrer to the petition herein; said demurrer is in the following words and figures, to wit:

In the United States Circuit Court for the Western Division of the Western District of Missouri.

NINTH NATIONAL BANK OF THE CITY OF NEW YORK
against
JACKSON COUNTY, in the State of Missouri.

63 Defendant demurs to plaintiff's petition for the reason that it states no cause of action, the bonds sued upon being invalid, because it appears said bonds were issued by defendant, acting in behalf of Van Buren township, in said county, to the Lexington, Lake and Gulf Railroad Company; that the vote which was taken under the law by the voters of said township was to determine whether the county court of said county should subscribe, for and in behalf of said township, to the capital stock of the Pleasant Hill Subdivision of the Lexington, Chillicothe and Gulf Railroad Company; that the said county court did make a subscription to the capital stock of said last-named road; that, instead of acting as instructed by said vote and in accordance with said subscription, it issued the bonds, as stated, to the Lexington, Lake and Gulf Railroad Company, and received therefore the stock of said company last named instead of that of the company to which the subscription was made, said last-named company being a company composed of said Pleasant Hill Subdivision of the Lexington, Chillicothe and Gulf Railroad Company and the Lexington, Chillicothe and Gulf Railroad Company consolidated; that the petition does not show when either of the two last-named roads were incorporated, nor does it show when they were consolidated.

GATES AND WALLACE AND
TICHENOR, WARNER AND DEAN,
Attorneys of Defendant.

And afterwards, to wit, at the regular October term, 1882, of said court, and on the 18 day of Oct., 1882, the following entry appears of record in said cause, to wit:

64 NINTH NATIONAL BANK *vs.* JACKSON COUNTY.

This cause having been heretofore submitted to the court upon the demurrer to the petition and taken under advisement, now, the premises having been fully considered and the court being fully advised concerning the same, it is ordered that the said demurrer be overruled; thereupon comes the defendant, by its attorneys, and takes leave until Monday next to answer the petition, said opinion being in the following words and figures, to wit:

Circuit Court of the United States, Western District of Missouri.
October Term, 1882.

NINTH NATIONAL BANK OF THE CITY OF NEW YORK
against
JACKSON COUNTY, in the State of Missouri.

KREKEL, *Judge*:

The suit in this case is on coupons detached from bonds issued by Jackson county on behalf of Van Buren township to the Lexington, Lake and Gulf Railroad Company.

From the declaration in the case it appears that the bonds were issued under the act of the 23rd March, 1868, known as the township aid act of Missouri, on a vote ordered as required by that act, and that a two-thirds vote was obtained in favor of the subscription; that the county court of Jackson county thereafter, on the 1st day of September, 1870, made a subscription to the capital stock of said
Pleasant Hill Division of the Lexington, Chillicothe and
65 Gulf railroad and the said last company and the Lexington,
Chillicothe & Gulf Railroad Company, having power to do so by law and according to special provisions to that effect contained in the charters and articles of association, respectively, of said companies, thereafter consolidated into a company under the name and style of the Lexington, Lake and Gulf railroad.

The declaration proceeds to recite that stock was issued by the Lexington, Lake and Gulf Railroad Company to Van Buren township for the full amount of its subscription; that the same is now held by it; that in the elections of directors the stock was voted by the township; that taxes were levied and collected for a number of years, and the coupons of the bonds as they became due were paid up to 1876; thereupon prays judgment.

The declaration is demurred to on the ground that it shows the vote of the township to have been in favor of subscribing to the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company while the bonds were issued to the Lexington, Lake and Gulf Railroad Company.

The question raised by the demurrer is, Could the county court of Jackson county, for and on behalf of Van Buren township, issue bonds voted in aid of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf railroad to the Lexington, Lake and Gulf Railroad Company. The declaration alleges, as we have seen, that the county court by an order of record subscribed the stock to the Pleasant Hill Division of the Lexington, Chillicothe & Gulf Railroad Company, which division afterwards consolidated with the Lexington, Chillicothe and Gulf railroad under the name of the Lexington, Lake and Gulf Railroad Company, so that the question to be determined is, Was the subscription, as made, a valid one? The case of Harshman *vs.* Bates County, 92 U. S., and Bates County *vs.* Winter, 97 U. S., are relied on to show the insufficiency of such subscription. In the Harshman case no subscription or order subscribing had been made before consolidation, and the court asks, "Did not the

66 authority cease by the extinction of the company voted for? No subscription had been made. No vested rights had accrued to the company." The subscription to the consolidated company was held to be void and the bonds issued without authority, and void also. In the case under consideration a subscription, as we have seen, was made by the order of the county court valid, as decided in Nugent against The Supervisors, 19 Wallace, and the County of Moultrie against Savings Bank, 92 U. S. Supreme Court.

In the Bates County against Winter case the supreme court declared the action of the county court of Bates county of June 14th, 1870, not final and self-executing and not, therefore, a subscription. The cases commented on differ from the case in hand in this, that while in them no valid subscriptions had been made before the consolidation, in the case under consideration such a subscription was made prior to the consolidation. By the authorized consolidation the Lexington, Lake and Gulf Railroad Company acquired all the rights of the prior companies, including the right to receive the bonds in controversy.

The Harshman case was modified by the Supreme Court of the United States in a later case, but not upon the point referred to. The Winter case is again before the Supreme Court on additional evidence as to the first subscription.

The law is declared to be for the plaintiff on the demurrer, and the same is overruled.

J. B. HENDERSON AND
J. M. LEWIS,
For Plaintiff.
GATES AND WALLACE AND
TICHENOR, WARNER AND DEAN,
For Defendant.

67 And afterwards, at the regular October term, 1882, of said court, and on the 23rd day of October, 1882, the following entry appears of record, to wit:

NINTH NATIONAL BANK *against* COUNTY OF JACKSON.

This day comes the defendant, by its attorneys, and files its answer herein

And said answer is in the following words and figures, to wit:

In the United States Circuit Court for the Western Division of the Western District of Missouri.

THE NINTH NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff,
against
JACKSON COUNTY, in the State of Missouri, Defendant.

Defendant, for its answer, denies each and every allegation of plaintiff's petition, excepting only those which are hereinafter expressly admitted.

Defendant admits the incorporation of plaintiff, and that it is located and does business in the State of New York. Defendant admits it executed the bonds and the coupons referred to in said petition for and in behalf of the township of Van Buren, in said county, and not otherwise. Defendant admits that said bonds were issued to the Lexington, Lake and Gulf Railroad Company and delivered to it, but denies that it was done so for value.

Defendant, further answering, says that the said Lexington, Chillicothe and Gulf Railroad Company was incorporated under
68 the general laws of the State of Missouri August 25th, 1869,
and that the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company was incorporated under the general laws of the State of Missouri on the 14th day of July, 1870, and that both said companies were attempted to be consolidated under the general laws of said State the 4th day of October, 1870, under the name of the Lexington, Lake and Gulf Railroad Company, but were not, inasmuch as the line of road to be constructed by the new company was not the same as those of the two companies so attempted to be consolidated.

Defendant admits that, in accordance with the statute of said State in such cases made and provided, a petition to the county court of defendant was signed by at least twenty-five tax-payers, residents of said township of Van Buren, whereby they did petition said court, setting forth their desire as a township to subscribe to the capital stock of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, stating the amount of subscription they wished to make and the terms and conditions upon which they desired said subscription to be made, as they had the right to do under the laws of said State; and defendant says that one of the conditions in said petition contained and upon which it was to be made was that the said railroad, for the construction of which the said subscription was proposed to be made, should commence at Chillicothe and run thence via the city of Lexington, in Lafayette county, Missouri; thence to a point near the town of Hopewell, in said county of Lafayette, in a southwesterly direction through said Van Buren township, Jackson county, Missouri, to the town of Pleasant Hill, and was to run through or within one-half mile of Easly's first addition to the town of Lone Jack, in said Van Buren township.

69 And defendant says that its county court did, in accordance with the statutes of said State, order an election to be held in said township to determine whether such subscription should be made. Defendant admits that an election was held, and that said county court did, at the September term thereof, 1870, make an order reciting, among other things, that said proposition to subscribe the sum of fifty thousand dollars to the capital stock of said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company was voted for by not less than two-thirds of the qualified voters of said township voting at such election; and the order recited further that such subscription be made in accordance with the terms and conditions of said petition, but that said subscription was never in fact made nor was it ever in any shape or form ac-

cepted or acted upon by the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company.

Defendant says that said county of Jackson had no power or authority, either by means of its county court or otherwise, to subscribe for said township of Van Buren, except in the manner and in accordance with the terms and conditions of the aforesaid petition, upon which the order was made submitting the question as aforesaid to be voted upon by the tax-payers and residents of said township, and in no event was the county authorized to make the subscription, even upon the terms and conditions of said petition, to any capital stock except that of said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company.

Defendant denies that said county made any subscription to the
capital stock of the Pleasant Hill Division of the Lexington,
70 Chillicothe and Gulf Railroad Company, either for said Van
Buren township or otherwise, but that it did make an order
in reference to a subscription to the Lexington, Lake and Gulf Railroad Company, which it had no authority to do, but no subscription was ever actually made at all.

Defendant denies that the county court of Jackson county accepted from the Lexington, Lake and Gulf Railroad Company a certificate of stock in the capital stock of said company for fifty thousand dollars or for any other sum, either for Van Buren township or for any other purpose, and defendant denies that said county court ever received any certificate, for any sum, of the capital stock of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company.

Defendant denies that said county court caused any stock of either of said companies to be voted for any purpose whatever.

Defendant, further answering, says that neither said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company nor said Lexington, Lake and Gulf Railroad Company had the power to comply with the terms upon which the subscription was attempted to be made, inasmuch as neither could construct a road commencing at Chillicothe, which is in Livingston county, the second one north of the Missouri river; that neither of said companies had the power to construct a road north of said river, and said road to which the subscription was voted to be made only had the power to construct a railroad commencing at the south boundary line of said La Fayette county, Missouri, and, defendant says, of all the matters and things above set forth plaintiff had notice at all times; that upon each and every bond mentioned and described in plaintiff's petition and as a part thereof was printed the
following: "This bond being issued under and pur-
71 suant to an order of the county court of Jackson county, by
virtue of an act of the General Assembly of the State of Mis-
souri approved March 23rd, 1868, and authorized by a vote of the people taken August the 30, 1870, as required by law, upon the proposition to subscribe fifty thousand dollars to the capital stock of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company. Said railroad last aforesaid and the former

Lexington, Chillicothe and Gulf Railroad Company were, on the 4th of October, 1870, consolidated, as required by law, into the company under the name of the Lexington, Lake and Gulf Railroad Company. Defendant says that neither of the aforesaid companies have constructed any railroad.

Wherefore defendant demands judgment.

GATES AND WALLACE AND
TICHENOR, WARNER AND DEAN,
Att'ys for Defendant.

And afterwards, to wit, Nov. 16th, 1882, the following demurrer to defendant's answer was filed in the office of the clerk of said court, said demurrer being in the words and figures following, to wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

NINTH NATIONAL BANK
against
COUNTY OF JACKSON, for VAN BUREN TOWNSHIP.

Now comes the plaintiff and demurs to the answer of defendant filed in this cause and says that said answer and all the matters and things therein stated constitute no defense to plaintiff's action. 72

2nd. The averments in said answer, when taken in connection with the admissions expressed and implied therein, show that defendant is wholly without defense to plaintiff's action, and plaintiff prays judgment on his petition notwithstanding said answer.

J. B. HENDERSON,
Attorney for Plaintiff.

And afterwards, at an adjourned session of the regular October term, 1882, of said court, and on the 22 day of December, 1882, the following entry appears of record, to wit:

NINTH NATIONAL BANK *against* COUNTY OF JACKSON.

This day come the parties, by their attorneys, and submit this cause to the court.

And afterwards, at the regular October term, 1883, of said court, and on the 20 day of Oct., 1883, the following entry appears of record, to wit:

NINTH NATIONAL BANK *against* JACKSON COUNTY.

This cause having been heretofore submitted to the court upon demurrer to defendant's answer and taken under advisement, and the court having considered the same, and being fully advised of and concerning the premises, doth order that said demurrer be sustained.

73 And afterwards, to wit, at an adjourned day of the regular October term, 1883, of said court, and on the 14 day of January, 1884, the following entry is of record in said cause, to wit:

NINTH NATIONAL BANK *against* COUNTY OF JACKSON.

This day comes the defendant, by its attorney, and moves the court for leave to make an amendment to its answer by interlineation, by inserting in folio 3 of said answer, between lines 25 and 26, the following words: "But that said subscription was never in fact made nor was it ever in any shape or form accepted or acted upon by the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company;" and said motion being called, heard, and submitted, it is ordered that the same be granted and the said amendment accordingly made.

And afterwards, to wit, at said term of said court and on the 16 day of January, 1884, the following entry appears of record, to wit:

NINTH NATIONAL BANK *against* COUNTY OF JACKSON.

This day come the parties, by their attorneys, and the demurrer to the answer being called for hearing, the same is argued by counsel, submitted to the court, and taken under advisement.

And afterwards, to wit, at the regular May term, 1884, of said court, and on the 22 day of May, 1884, the following entry appears of record, to wit:

74 NINTH NATIONAL BANK *against* COUNTY OF JACKSON.

By written agreement of parties the above-numbered causes (448 and 776) are consolidated and the hearing thereof on the pleadings and proofs set for the 16th day of June ensuing. A jury is waived by the parties.

And the petition in said cause, numbered 776, filed in the office of the clerk of said court on the 28 day of March, 1884, is in the following words and figures, to wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri. May Term, 1884.

NINTH NATIONAL BANK OF NEW YORK, Plaintiff,
against
JACKSON COUNTY, in the State of Missouri, Defendant.

The plaintiff respectfully represents to the court that it is a banking company, duly incorporated as such under the laws of the United States and under the laws of the State of New York, composed of stockholders resident in the State of New York and citizens thereof, and said bank is located in the State of New York and does business therein and is a citizen of said State of New York, and that the defendant is a municipal corporation composed of citizens of the State of Missouri, the same being a county in said State and a citizen thereof.

And plaintiff further says that the defendant, on the 4th day of January, A. D. 1871, by its certain writing obligatory, called
75 and known as Jackson county railroad bond No. 18, signed
by Joshua Petty, then presiding justice of the county court of said Jackson county, and by E. R. Hickman, then clerk of the county court of said county, and sealed with the seal of the county court of said county, which said bond is dated on the 4th day of January, 1871, acknowledged itself indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company, or bearer, in the sum of one thousand dollars, which sum said defendant, by the said writing obligatory, on the day and year aforesaid and for and on behalf of Van Buren township, in said county and State, promised to pay to said railroad company or bearer, at the Bank of America, in the city and State of New York, on the 4th day of January, A. D. 1890, together with interest thereon from the date thereof, at the rate of six per centum per annum, which interest was and is to be paid semi-annually on the presentation and delivery of the coupons for interest, thereto attached, at the said Bank of America, in the city and State of New York.

Plaintiff says that said bond and other bonds hereinafter described were authorized and issued under the following circumstances, to wit:

On the 25th day of August, 1869, the Lexington, Chillicothe and Gulf railroad was duly incorporated under the general incorporation laws of the State of Missouri, with power and authority to construct and operate a railroad from the city of Lexington, in La Fayette county, Missouri, to run in a southwardly direction, by the way of Mt. Hope, in said county, to Holden, in Johnson county, and thence through East Sugar Creek township, in Cass county, and thence southwardly in the direction of Butler, in Bates county, and thence, in the same direction, to such point in said Bates
76 county as may be found most advantageous to connect said
railroad with Fort Scott, in Kansas, to pass through the counties of La Fayette, Johnson, Cass, and Bates, in said State of Missouri.

And afterwards, to wit, on the 18th day of July, 1870, the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company was duly incorporated under and by virtue of the general laws of the State of Missouri, with power and authority to build, construct, and operate a railroad "commencing on the south boundary line of La Fayette county, in the State of Missouri, in the vicinity of the town of Chapel Hill, in the said La Fayette county, and thence running southwardly from said commencing point along the most advantageous route within one-quarter of a mile of the Lone Jack tree, in the vicinity of Lone Jack, in Jackson county, in said State of Missouri, to the city of Pleasant Hill, in the county of Cass, in said State, and thence southwardly along the best and most advantageous route and by the way of the town of Austria, in said Cass county, to such point at or near the south boundary line of said

Cass county as may be found most advantageous to intersect and consolidate with said Lexington, Chillicothe and Gulf Railroad Company." The line of said road was fixed in said charter to pass through the counties of Johnson, Jackson, and Cass, in said State of Missouri.

As a part of said charter the following is one of the provisions of said act of incorporation, to wit:

"SEC. 2. The objects of this association shall be the construction, maintaining, and operating a railroad for public use in the conveyance of persons and property and eventually to consolidate with and form a link in and be a part of the main line of said Lexington, Chillicothe and Gulf Railroad Company."

77 Plaintiff avers that after the incorporation and organization of the companies hereinbefore named and while full power and authority existed, both by the laws of the State of Missouri then existing and by the express provisions of the act of incorporation of the said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company to consolidate and unite the said two companies into one company or organization for the purpose of building, constructing, and operating a joint line of railroad, with all the powers, privileges, rights, and immunities which belonged to or were vested in either or both of said companies, a petition, duly signed by fifty-eight tax-payers and residents of the said township of Van Buren, was presented to the county court of said Jackson county, setting forth their desire as a township to subscribe to the capital stock of the said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, then and there duly organized as aforesaid, and proposing to build a railroad into and through said township, the sum of fifty thousand dollars; that said petition was presented and considered by said county court, duly convened and sitting at a regular term of said court, on the 2nd day of August, 1870, whereupon the said county court ordered that an election be held in said township on August 30, 1870, to determine according to the laws then and there in force in said State if such subscription should be made.

And plaintiff avers that in obedience to said order of the court an election was duly held according to law on the day named therefor in said township, and the returns thereof were duly certified and made to the said court, and said returns were duly canvassed at an adjourned term of said county court, held on the 6th day of
78 September, 1870; whereupon the said court made and entered upon the record an order declaring that not less than two-thirds of the qualified voters of said township had voted at said election in favor of said subscription and had voted said sum of fifty thousand dollars to the capital stock of said railroad company at the said election so held on the 30th day of August, 1870.

And the said court, at the time last aforesaid, made and entered upon the records as a part of the order hereinbefore recited the following order, to wit: "It is therefore ordered by this court, in compliance with said election and at the application of said company, that said subscription so voted as aforesaid of said sum of fifty thousand dollars by said township to the capital stock of said railroad company be had and made and entered of record, and said subscription is now made by this court in behalf of and for said township of Van Buren as aforesaid, and said subscription and sum of fifty thousand dollars, to be delivered to said railroad company or to such company as said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company may consolidate with, in accordance with the terms and conditions of the petition in the matter of said election and order and proceedings relative thereto heretofore made and filed in this court."

And plaintiff further avers that after the proceedings hereinbefore mentioned and after the subscription of said stock as aforesaid to said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, to wit, the 4th day of October, 1870, the said two companies, to wit, the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company and the Lexington, Chillicothe and Gulf Railroad Company filed articles of consolida-
79 tion in the office of the secretary of state of the State of
Missouri, executed according to law, whereby the said two companies consolidated and formed themselves into one company, to wit, the Lexington, Lake and Gulf Railroad Company, which said company according to the laws then and there existing, and from thence to the present time existing as a part of the law of the State of Missouri, the said new company acquiring and possessing all the powers, rights, privileges, and immunities vested in and belonging to either or both of said companies so consolidating.

It was provided as a part of the articles of said consolidated companies that the name thereof should be the Lexington, Lake and Gulf Railroad Company, and that said company should have power and authority to construct and operate a railroad from the city of Lexington in La Fayette county, Missouri, running southwardly along the line and route indicated in the articles of association of said Lexington, Chillicothe and Gulf Railroad Company to the south boundary line of La Fayette county, in the vicinity of the town of Chapel Hill, in said La Fayette county, and thence and therefrom running along the line and route as mentioned and indicated in the articles of association of said original Pleasant Hill Division of said Lexington, Chillicothe and Gulf Railroad Company to such point in Bates county, Missouri, as may be required and found most convenient for said consolidated company to demand, receive, and avail itself of the subscription heretofore voted to the capital stock of said original Lexington, Chillicothe and Gulf Railroad Company by the townships of Grand River and Mt. Pleasant or either of them, in said Bates county, and thence to such point in or through said Bates county as may be found most advantageous or convenient to connect with railroad constructed or to be
80 constructed in the State of Kansas, etc.

It was further provided as a part of such articles of consolidation that all certificates of stock of the said several companies heretofore named should be called in and new certificates of stock should be issued by the new company to those owning and entitled to the same. And it was further provided, as part of said articles of consolidation, that the new company should have and possess all the powers, rights, privileges, and immunities which belong to either or both of the old companies aforesaid, and that all property belonging to either of said companies and all subscriptions belonging to either of said companies should be transferred to and become the property of said new company; and, further, said new or consolidated company was to have and possess full and complete power, authority, and right in law or equity to demand, sue for, recover, receive, and receipt for all and every such sum as may have been and as are now and may be subscribed to, voted, or pledged to the capital stock of said two several railroad companies or either of them, by individuals, counties, townships, towns, or otherwise, so that said consolidated company shall have full power and authority to have, use, and own all and every the assets of said two several companies or subscriptions made or to be made, whether absolute or conditional, to the capital stock of said companies or either one of them as fully and to all intents and purposes as either of said railroad companies might or could have done and performed had these articles of consolidation never been concluded or entered into.

It was further provided in the said articles of consolidation that
the stock subscribed to the Pleasant Hill Division of the
81 Lexington, Chillicothe and Gulf Railroad Company by in-
dividuals and townships named, including the township of
Van Buren, in the county of Jackson aforesaid, should be expended by the said new or consolidated company according to the terms, conditions, and limitations upon which said subscriptions were originally made or voted to the capital stock of said last-named company.

And it is further certified in said articles of consolidation that said consolidation was made and entered into according to the laws of Missouri then in force, and that the said articles had become ratified and accepted by each of said original railroad companies and by the stockholders thereof as provided by law, and that the provisions of said articles were accepted and made part of the said articles of consolidation.

And plaintiff further says that in obedience to the proceedings hereinbefore recited and by authority of law the county court of Jackson county, at its regular January term, 1871, to wit, on the 4th day of said month, made and entered upon its record an order that fifty thousand of the bonds of Jackson county for and in behalf of Van Buren township, in said county, be issued and delivered to the Lexington, Lake and Gulf Railroad Company, in obedience to the former orders and proceedings of said court; and it was further ordered that, inasmuch as the said court was satisfied that all the conditions in said subscription contained authorizing the issuance of said bonds have been complied with on the part of said company, "therefore that said bonds should be executed in the usual form by the presiding justice and the clerk of said court, and that
the same should be delivered in payment of said stock sub-
82 scription to John Reed, the president of said last-named rail-
road company.

And plaintiff further avers that, in compliance with the said order, the said bonds were duly executed and delivered to the said John Reed, president of said railroad company, and that the said county received and accepted in behalf of said township certificates of stock in the said consolidated company equal in amount to the stock so subscribed to the said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, and that the county court of said county, as agent of said township for many years, to wit, for six years thereafter, voted and controlled said stock in the election of directors of said consolidated company and in all other business matters connected therewith; and plaintiff further avers that the county court from year to year thereafter, after the issuance and delivery of said bonds as aforesaid, levied each and every year upon the tax-payers of said Van Buren township a tax sufficient to pay the accruing interest upon said bonds, and the tax-payers thereof willingly consented to pay and did pay such taxes so levied, from year to year, up to and inclusive of the 1st day of January, 1876, whereby the issuance and delivery of said bonds were ratified and approved by the county court of said county and by the people of said township, and the people thereof and said county of Jackson are estopped from denying the validity of said bonds.

And plaintiff says that the bond hereinbefore referred to and described in this petition, to wit, bond No. 18, is one of the bonds so authorized to be delivered to said John Reed, president, and which was so delivered to him in discharge of the said stock subscription,
and the same was negotiated and sold in open market, for a
83 full and fair consideration, to innocent purchasers, from whom
the plaintiff received it for a full consideration, in the usual course of business, without notice of any irregularity or defect in the issue thereof.

Second. And plaintiff avers that at the time of issuing and negotiating said bond hereinbefore described the said defendant county issued, negotiated, and delivered to said railway company, for and in behalf of said township, certain other bonds and numbered as follows, to wit: Nos. 20, 21, 22, 23, 32, 33, 35, 36, 39, 46, 47, 48, 29, 42, 39, 40, 41, 38, 30, 10, 11, 12, 14, 19, 8, 9, 34, 43, 44, 2, 28, 3, 5, 6. 13, 24, 25, 26, 45, 1, and 17, each bond being for one thousand dollars, dated on the same day as bond No. 18, hereinbefore described, payable at the same time and place as said bond and containing the same recitals and issued and delivered for the same consideration and for the same purpose as said bond No. 18.

And said last-named bonds are in all respects alike and similar to said bond No. 18, except the serial numbers by which they are distinguished; they contain the same number of coupons, which are payable in the same manner and at the same place, and said bonds and coupons were issued and negotiated in like manner for stock subscribed by said county in behalf of said township, for which said county executed certificates of stock in same manner in said company, and yet holds and retains the same.

Third. Plaintiff says that he is the owner and holder for value of all the coupons hereinafter named, detached from the bonds here-

84 inbefore described, which coupons, on the respective dates of their maturity, as hereinafter stated, he caused to be presented for payment at the office of the county treasury of said county, and payment thereof was demanded and refused, by each of which said coupons the said county, for and in behalf of said township of Van Buren, promised and agreed to pay to the bearer at the said office of the county treasurer of said county the sum of thirty dollars, one of said coupons being detached from each of the bonds hereinafter named and payable at the dates named, to wit:

Defendant promised to pay to bearer thirty dollars by each of the thirteen following coupons, all due and payable on the 4th day of July, 1876, one coupon being detached from each of the following-named bonds, to wit: Nos. 18, 20, 21, 22, 23, 32, 33, 35, 36, 37, 46, 47, and 48.

Fourth. Defendant further promised to pay to bearer for value thirty dollars by each of the following thirteen coupons due and payable on the 4th day of January, 1877, one coupon being detached from each of the bonds hereinbefore last named, and also No. 18.

Fifth. Defendant further promised to pay to bearer for value thirty dollars by each of the following thirteen coupons, due and payable on the 4th day of July, 1877, one coupon being detached from each of the bonds herein last named.

Sixth. Defendant further promised to pay to bearer for value thirty dollars by each of the following thirteen coupons, due and payable on the 4th day of January, 1878, one coupon being detached from each of the bonds herein last mentioned.

Seventh. Defendant in the same manner agreed and promised for value to pay to bearer thirty dollars by each of the 85 following thirteen coupons, due on the 4th day of July, 1878, one coupon being detached from each of the bonds herein last named.

Eighth. Defendant further promised to pay to bearer for value thirty dollars by each of the following thirteen coupons, due and payable on the 4th day of January, 1879, one coupon being detached from each of the bonds herein last named.

Ninth. Defendant promised to pay to bearer thirty dollars by each of the following thirteen coupons, all due and payable on the 4th day of July, 1879, one coupon being detached from each of the bonds herein last named.

Tenth. Defendant promised to pay to bearer thirty dollars by each of the thirteen following coupons, all due and payable on the 4th day of January, 1880, one coupon being detached from each of the bonds herein last named.

Eleventh. Defendant promised to pay to bearer thirty dollars by each of the following thirteen coupons, all due and payable on the 4th day of July, 1880, one coupon being detached from each of the bonds herein last named.

Twelfth. Defendant in the same manner agreed and promised for value to pay to bearer thirty dollars by each of the following thirteen coupons, due on the 4th day of January, 1881, one of said coupons being detached from each of the bonds last aforesaid.

Thirteenth. Defendant further promised to pay to bearer thirty ($30) dollars by each of the following thirteen coupons, all due and payable on the 4th day of July, 1881, one coupon being detached from each of the bonds last named.

86 And, fourteenth. Defendant further promised to pay to bearer thirty dollars by each of the following thirteen coupons, all due and payable on the fourth day of January, 1882.

Fifteenth. Defendant further promised to pay to bearer thirty dollars by each of the following forty-two (42) coupons, all due and payable on the 4th day of July, 1882, one coupon being detached from each of the bonds last named, and also Nos. 29, 42, 39, 40, 41, 38, 30, 10, 11, 12, 14, 19, 8, 9, 34, 43, 44, 2, 28, 3, 5, 6, 13, 24, 25, 26, 45, 1, and 17.

Sixteenth. Defendant further promised to pay to bearer thirty dollars by each of the following forty-two (42) coupons, all due and payable on the 4th day of January, 1883, one coupon being detached from each of the bonds herein last named.

Seventeenth. Defendant further promised to pay to bearer thirty dollars by each of the following forty-two coupons, all due and payable on the 4th day of July, 1883, one coupon being detached from each of the bonds herein last named.

Eighteenth. Defendant further promised to pay to bearer thirty dollars by each of the following forty-two coupons, all due and payable on the 4th day of January, 1884, one coupon being detached from each of the bonds herein last named.

And plaintiff now comes and says that it is the owner and holder of each and all said coupons, to wit, three hundred and twenty-four (324) in number, each being payable at the dates specified above, and each promising to pay to bearer thirty dollars as aforesaid, which coupons he caused to be presented for payment at maturity, according to their terms, as herein set forth, at the office of 87 the Bank of America, in the city and State of New York, and payment thereof in each and every case was refused.

Wherefore an action hath accrued to plaintiff to have judgment for the amount of said coupons, and for interest and damages, and he therefore now brings his suit and prays judgment as aforesaid for said coupons, with interest, damages, and costs of suit.

J. B. HENDERSON,
JAMES M. LEWIS,
Attorneys for Plaintiff.

The coupons filed with said petition are in words and figures as follows, to wit:

88 $30. $30.

City of Independence, Jackson Co., Mo.,
Jan'y 4, *A. D.* 1871.

The County of Jackson acknowledges to owe the sum of thirty dollars in gold, payable to bearer, on the 4th day of July, 1882, at the Bank of America, in the city and State of New York, for six months' interest on bond No. 1.

E. R. HICKMAN,
Clerk County Court, Jackson Co., Mo.

(Here follow 324 other coupons (pp. 88 to 134, incl.), omitted in printing, per stipulation. See page 209.)

135 Upon the filing of said petition a writ of summons was issued in words and figures as follows, to wit:

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, } *sct:*

The President of the United States of America to the marshal of the United States for the Western District of Missouri, Greeting:

You are hereby commanded to summon Jackson County, in the State of Missouri, and in the western division of the western district thereof, to be and appear before the honorable circuit court of the United States in and for the western division of the western district of Missouri, on the first day of the next term thereof, to be begun and holden in the city of Kansas, in said district, on the third Monday, the 19th day, of May next, then and there to answer the complaint of the Ninth National Bank of the city of New York, a corporation of the State of New York, as set forth in the petition filed in the office of the clerk of said court on the 28th day of March,
136 one thousand eight hundred and eighty-four.

Hereof fail not, and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 31st day of March, A. D. eighteen hundred and eighty-four.

Issued at office, in the city of Kansas, in said district, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.] H. C. GEISBERG,
Clerk of said Court,
By WARREN WATSON,
Deputy Clerk.

And said writ of summons was duly returned with the following endorsement thereon, to wit:

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, } *sct:*

I do hereby certify that I served the within writ by delivering a true copy thereof, together with a certified copy of the petition filed in the cause, to J. W. Swearingen, deputy county clerk of Jackson county, Missouri, in the office of the clerk of the county court of Jackson county, in Independence, Missouri, on the 11th day of April, 1884, the said J. W. Swearingen being a regularly appointed deputy, and having charge of said office, W. S. Burr, clerk of the county court of said Jackson county, being absent from his office and the city of Independence.

Done in the western division of the western district of Missouri.

JOSEPH H. McGEE,
U. S. Marshal, West. Dist. of Missouri.
By OWEN H. McGEE, *Deputy.*

137 And afterwards, to wit, at the regular May term, A. D. 1884, of said court, and on the 20 day of May, 1884, the following entry appears of record in said cause numbered 776, to wit:

NINTH NATIONAL BANK *against* COUNTY OF JACKSON.

This day comes the defendant and files answer, by its attorneys, and said answer is in the following words and figures, to wit:

In the United States Circuit Court for the Western Division of the Western District of Missouri.

NINTH NATIONAL BANK OF THE CITY OF NEW YORK, Plaintiff,
against
JACKSON COUNTY, in the State of Missouri, Defendant.

Defendant for its answer denies each and every allegation of plaintiff's petition, excepting only those which are hereinafter expressly admitted.

Defendant admits the incorporation of plaintiff and that it is located and does business in the State of New York. Defendant admits it executed the bonds and the coupons referred to in said petition and for and on account of the township of Van Buren, in said county, and not otherwise. Defendant admits that said bonds were issued to the Lexington, Lake and Gulf Railroad Company and were delivered to it, but denies that it was done so for value.

138 Defendant, further answering, says that the said Lexington, Chillicothe and Gulf Railroad Company was incorporated under the general laws of the State of Missouri August 25, 1869, and that the pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company was incorporated under the general laws of the State of Missouri on the 14th day of July, 1870, and that both of said companies were attempted to be consolidated under the general laws of said State the 4th day of October, 1870, under the name of the Lexington, Lake and Gulf Railroad Company, but were not, inasmuch as the line of road to be constructed by the new company was not the same as those of the two companies so attempted to be consolidated.

Defendant admits that in accordance with the statutes of said States in such cases made and provided a petition to the county court of defendant was signed by at least twenty-five tax-payers, residents of the township of Van Buren, whereby they did petition said court, setting forth their desires as a township to subscribe to the capital stock of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, stating the amount of the subscription they wished to make and the terms and conditions upon

which they desired said subscription to be made, as they had the right to do under the laws of said State; and defendant says that one of the conditions in said petition contained and upon which it was to be made was that the railroad for the construction of which the subscription was proposed to be made should commence at Chillicothe and run thence via the city of Lexington, in La Fayette county, Missouri, thence to a point near the town of Hopewell, in said county of La Fayette, in a southwesterly direction through said Van Buren township, Jackson county, Missouri, to the town of
139 Pleasant Hill, and was to run through or within one-half mile of Easly's first addition to the town of Lone Jack, in said Van Buren township.

And defendant says that the county court did, in accordance with the statutes of said State, order an election to be held in such township to determine whether such subscription should be made; defendant admits that an election was held, and that said county court did at the September term, 1870, thereof make an order reciting, among other things, that said proposition to subscribe the sum of fifty thousand dollars to the capital stock of said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company was voted for by not less than two-thirds of the qualified voters of such township voting at such election; and the order recited further that such subscription be made in accordance with the terms and conditions of such petition, but that such subscription was never in fact made, nor was it ever in any shape or form accepted or acted upon by the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company.

Defendant says that said county of Jackson had no power or authority, either by means of its county court or otherwise, to subscribe for said township of Van Buren, except in the manner and in accordance with the terms and conditions of the aforesaid petition upon which the order was made submitting the question as aforesaid to be voted upon by the tax-payers and residents of said township, and in no event was the county authorized to make the subscription, even upon the terms and conditions of said petition, to any capital stock, except to that of the said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company.

140 Defendant denies that said county made any subscription to the capital stock of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, either for said Van Buren township or otherwise, but that it did make an order in reference to a subscription to the Lexington, Lake and Gulf Railroad Company, which it had no authority to do, but no subscription was ever actually made at all.

Defendant denies that the county court of Jackson county accepted from the Lexington, Lake and Gulf Railroad Company a certificate of stock in the capital stock of said company for fifty thousand dollars or for any other sum, either for Van Buren township or for any other purpose, and defendant denies that said county court ever received any certificate for any sum of the capital stock of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company.

Defendant denies that said county court caused any stock of either of said companies to be voted for any purpose whatever.

Defendant, further answering, says that neither said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company nor said Lexington, Lake and Gulf Railroad Company had the power to comply with the terms upon which the subscription was attempted to be made, inasmuch as neither could construct a road commencing at Chillicothe, which is in Livingston county, the second one north of the Missouri river; that neither of said companies had the power to construct a road north of said river, and said road to which the subscription was voted to be made only had the power to construct a railroad commencing at the south boundary line of said La Fayette county, Missouri, and defendant says
141 of all the matters and things above set forth plaintiff had notice at all times; that upon each and every bond mentioned and described in plaintiff's petition and as a part thereof was printed the following: "This bond being issued under and pursuant to an order of the county court of Jackson county, by virtue of an act of the General Assembly of the State of Missouri approved March 23rd, 1868, and authorized by a vote of the people taken August the 30th, 1870, as required by law, upon the proposition to subscribe fifty thousand dollars to the capital stock of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company. Said railroad last aforesaid and the former Lexington, Chillicothe and Gulf Railroad Company were, on the 4th of Oct., 1870, consolidated, as required by law, into *the* company under the name of the Lexington, Lake and Gulf Railroad Company."

Defendant says that neither of the aforesaid companies have constructed any railroad.

Wherefore defendant demands judgment.

GATES AND WALLACE AND
TICHENOR, WARNER AND DEAN,
Att'ys of Defendant.

And afterwards, to wit, on the 21st day of May, A. D. 1884, the following stipulation of parties was filed in the office of the clerk of said court, to wit:

NINTH NATIONAL BANK, Plaintiff,
against
JACKSON COUNTY, Defendant.
} Nos. 448 and 776.

142 It is stipulated and agreed by and between the parties, plaintiff and defendant, in the above causes—

1st. That the said causes may be consolidated into one case and may be tried together as one case.

2nd. A jury is waived in the trial of said causes or either of them, and also in the trial of the consolidated case in the extent that said causes may be consolidated. If the case be heard by the district judge alone, the record shall be submitted to the circuit judge for his opinion and advice to the said district judge.

3rd. The bonds and coupons set forth and described in plaintiff's petition were issued by the county court of Jackson county, Missouri, and delivered to the president of the Lexington, Lake and Gulf Railroad Company after the consolidation of the Lexington, Chillicothe and Gulf Railroad Company and the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company into one company, known as the Lexington, Lake and Gulf Railroad Company.

4th. The several articles of association under which the Lexington, Chillicothe and Gulf Railroad Company and the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company and the articles of consolidation by and between said companies, constituting and forming the Lexington, Lake and Gulf Railroad Company, are as follows, to wit:

State of Missouri, *ss:*

I, Michael K. McGrath, secretary of state of the State of Missouri, hereby certify that the annexed pages contain a full, true, and complete copy of the articles of consolidation of the Lexington, Chillicothe and Gulf Railroad Company and the Pleasant Hill
143 Division of the Lexington, Chillicothe and Gulf Railroad Company, filed Oct. 4th, 1870, as the same appears on file and of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of office of the secretary of state. Done at the city of Jefferson this seventeenth day of September, A. D. eighteen hundred and seventy-nine.

[SEAL.] MICHAEL K. McGRATH,
Secretary of State.

Articles of consolidation of the Lexington, Chillicothe and Gulf Railroad Company and the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company.

To all whom it may concern:

Whereas heretofore articles of association were signed and entered into and the Lexington, Chillicothe and Gulf Railroad Company duly incorporated thereunder according to the laws of the State of Missouri on the 25th day of August, A. D. 1869, and which said articles of association and act of incorporation were and are in the words and figures following, to wit:

Articles of association of the Lexington, Chillicothe and Gulf Railroad Company, made and entered into this 13th day of August, one thousand eight hundred and sixty-nine.

Section 1. The name of this association shall be the Lexington, Chillicothe and Gulf Railroad Company, and shall continue for the term of one hundred years.

Section 2. The object of this association is the constructing, maintaining, and operating a railroad for public use in the conveyance of persons and property.

Section 3. The places from and to which said railroad is
144 to be constructed, maintained, and operated are as follows:

Commencing at the city of Lexington, in La Fayette county, Missouri, and thence running southwardly from said city of Lexington and east of the head-waters of the Little Sni creek by the way of Mt. Hope, in said county, to Holden, on the Pacific railroad, in Johnson county, and thence through East Sugar Creek township, in Cass county; thence southwardly in the direction of Butler, in Bates county, and thence southwardly to such point in said Bates county as may be found most advantageous to connect said railroad with Fort Scott, Kansas.

Section 4. The length of said railroad shall be, as near as may be, about seventy-five miles, and shall be made into or through the counties of La Fayette, Johnson, Cass, and Bates.

Section 5. The amount of capital stock of said company shall be two millions of dollars, divided into twenty thousand shares of one hundred dollars each.

Section 6. The names and places of residence of the directors who shall manage the affairs for the first year, and until others are chosen and qualified in their places, are as follows: Isaiah Nichols, Barney A. Crain, and Hosea H. Moore, Holden Missouri; Henry V. Stall, Cass county, Missouri; John A. Winson, Bates county, Missouri; Alex. K. Owens, Bates county, Missouri; Andrew Ritchie, Altoona, Bates county, Missouri; Mitchell Pickett, Barter, Bates county, Missouri; John Reid, J. F. Atkinson, Tilton Davis, Green D. Suterfield, and Chas. L. Ewing, La Fayette county, Missouri.

Section 7. This association is organized under and subject to chapters sixty-two and sixty-three of the general statutes of the State of Missouri.

145 We, whose names are hereto signed as subscribers to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company, hereby promise to be governed by the foregoing articles of association, and to pay the sums set opposite our names to the directors or the authorized agent of the directors of said company whenever and at such times and places and in such amounts as they may call on us so to do.

Witness our signatures and the amount thereto annexed this the 13th day of August, one thousand eight hundred and sixty-nine.

Names of subscribers.	Residence.	No. shares.	Dollars.
F. J. Fygard	Holden	47	4,700
I. Nichols	Holden	47	4,700
B. A. Crain	Holden	47	4,700
M. W. Mize	Holden	47	4,700
H. H. Moore	Holden	47	4,700
H. V. Stall	Cass Co., Mo.	47	4,700
John Atkinson	Bates county, Mo.	47	4.700
Alex. K. Owens	Butler, Mo.	47	4,700
Mitchell Pickett	Butler, Mo.	47	4,700
Andrew Ritchie	Bates Co., Mo.	47	4,700
Richard J. Dejamett	Bates Co., Mo.	47	4,700
Jno. Reid	Lexington	47	4,700
Tilton Davis	Lexington	47	4,700
G. D. Suterfield	La Fayette Co., Mo.	47	4,700
J. F. Atkinson	La Fayette Co., Mo.	47	4,700
Chas. L. Ewing	La Fayette Co., Mo.	47	4,700
Mark L. Demott	La Fayette Co., Mo.	1	100

Be it remembered that on this day came B. A. Crain, H. H. Moore, and H. V. Stall, three of the directors named in the
146 articles of association hereto attached, and upon their oaths state that there has been at least one thousand dollars of stock for every mile of railroad proposed to be made in good faith subscribed thereto, and that five per cent. in cash has been paid thereon to the directors named in said articles of association in good faith, and that it is intended in good faith to construct, maintain, and operate the road mentioned in said articles of association hereto attached.

B. A. CRAIN.
H. H. MOORE.
H. V. STALL.

Subscribed and sworn to before me this 20th day of August, 1869. Witness my hand and seal notarial at my office in Holden.

[SEAL.] DAVID NATION,
Notary Public.

OFFICE OF SECRETARY OF STATE,
CITY OF JEFFERSON, MISSOURI.

I, Francis Rodman, secretary of state for the State of Missouri, do hereby certify that the annexed pages contain a true, complete, and full copy of the articles of association of the Lexington, Chillicothe and Gulf Railroad Company, filed August 25th, 1869, as appears by comparing the same with the original articles now on file, as the law directs, in this office.

In testimony whereof I have hereto set my hand and affixed my official seal. Done at office this 25th day of August, A. D. eighteen hundred and sixty-nine.

[SEAL.] FRANCIS RODMAN,
Secretary of State,
By EUGENE F. WEIGAL,
Chief Clerk.

And whereas also articles of association were signed and entered into, and the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company duly incorporated thereunder 147 according to the laws of the said State of Missouri, on the 18th day of July, A. D. 1870, and which said articles of association and act of incorporation are substantially in words and figures as follows, to wit:

Articles of association of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, made and entered into this 14th day of July, 1870.

Sec. 1. The name of this association shall be the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, and shall continue for the term of one hundred years.

Sec. 2. The objects of this association shall be the constructing, maintaining, and operating a railroad for public use in the conveyance of persons and property, and eventually to consolidate with and form a link in and be a part of the main line of the said Lexington, Chillicothe and Gulf Railroad Company.

Sec. 3. The places from and to which said railroad is to be constructed, maintained, and operated, are as follows: Commencing on the south boundary line of La Fayette county, in the State of Missouri, in the vicinity of the town of Chapel Hill, in La Fayette county, and thence running southwestwardly from said commencing point along the most advantageous route, within one quarter of a mile of the Lone Jack tree, in the vicinity of Lone Jack, in Jackson county, in said State of Missouri, to the city of Pleasant Hill, in the county of Cass, in said State, and thence southwardly along the best and most advantageous route by the way of the town of Austin, in said Cass county, to such point at or near the south boundary line of said Cass county as may be found most advantageous to intersect and consolidate with said Lexington, Chillicothe and Gulf Railroad Company.

148 Sec. 4. The length of said road shall be, as nearly as possible, about 36 miles, and shall be made into or through the counties of Johnson, Jackson, and Cass, in said State of Missouri.

Sec. 5. The amount of capital stock of said company shall be one million dollars, divided into ten thousand shares of one hundred dollars each.

Sec. 6. The names and places of residence of the directors who shall manage the affairs of the company for the first year, and until others are chosen and qualified to fill their places, are as follows:

Names.	Residences.
John W. Reid	Lexington, La Fayette Co., Mo.
John T. Crisp	Independence, Jackson Co., Mo.
Joseph Ragsdale	Near Chapel Hill, Johnson Co., Mo.
John W. Tate	Lone Jack, Jackson Co., Mo.
Daniel Rheem	Lone Jack, Jackson Co., Mo.
Theodore Stanley	Pleasant Hill, Cass Co., Mo.
Chas. B. Dunbaugh	Pleasant Hill, Cass Co., Mo.

Clayton Van Hay	Pleasant Hill, Cass Co., Mo.
Andrew Allen	Pleasant Hill, Cass Co., Mo.
Andrew A. Zick	Pleasant Hill, Cass Co., Mo.
W. H. H. Cundiff	Pleasant Hill, Cass Co., Mo.
J. H. Nash	Austin, Cass Co., Mo.
John Crum	Austin, Cass Co., Mo.

SEC. 7. This association is organized under and subject to chapters 62 and 63 of the general statutes of the State of Missouri and the acts of the General Assembly amendatory thereto.

149 Now, know ye, that we, whose names are hereto signed as subscribers to the capital stock of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, hereby agree and promise to be governed by the foregoing articles of association and to pay the sums set opposite our respective names to the directors of said company whenever and at such times and in such amounts as they may call on us so to do.

Witness our signatures and the amounts thereto annexed this 16th day of July, A. D. 1870.

Names.	No. shares.	Amounts.
JAMES ALLEN	5	$500
ZICK AND GOSH	10	1,000

etc., etc., making in all the sum of money required to be subscribed, and which said articles of association were duly sworn to, and act of incorporation thereto annexed, which are as follows:

STATE OF MISSOURI,
County of Cass, } *ss:*

We, the undersigned, affiants and directors named in the foregoing articles, respectively make oath and state that the amount of stock required by the third section of chapter 63 of the general statutes of the State of Missouri has been in good faith subscribed and five per cent. paid in cash thereon, as required in said section, and that it is intended in good faith to construct, maintain, and operate the said railroad as specified in the foregoing articles of association.

ANDREW ALLEN.
CHAS. B. DUNBAUGH.
W. H. H. CUNDIFF.

150 Subscribed and sworn to before me this 18th day of July, A. D. 1870.

RUSH G. LEAMING,
Notary Public.

OFFICE OF THE SECRETARY OF STATE,
CITY OF JEFFERSON, MISSOURI.

I, Francis Rodman, secretary of state for the State of Missouri, do hereby certify that the annexed pages contain a true, complete, and full record of the articles of association of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, filed in this office on the 18th day of July, 1870, as appears by comparing the same with the original articles of association now on file, as the law directs, in this office.

In testimony whereof I have hereunto set my hand and affixed my official seal. Done at office this 18th day of July, 1870.

FRANCIS RODMAN,
Secretary of State,
By EUGENE F. WEIGAL, *Chief Clerk.*

And whereas said Lexington, Chillicothe and Gulf Railroad Company have commenced and will soon complete the construction of that part of said last-named railroad, being within La Fayette county, but find it impossible and impracticable to commence or complete that part of railroad indicated in the charter of said company and lying and being in and through the limits of said Johnson county and East Sugar Creek township, in Cass county;

And whereas said Pleasant Hill Division of said Lexington, Chillicothe and Gulf Railroad Company have commenced the construction of said last-named road;

151 And whereas both of said railroad companies have constructed parts of each said respective railroads and desire the consolidation thereof;

And whereas the line or route of said railroad indicated in the charter of said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company obviates the obstacles aforementioned, and connects the line of said Lexington, Chillicothe and Gulf Railroad Company, in Bates county, with that part of said last mentioned road in La Fayette county, and which two said lines of railroad, when completed and connected, will form in the main and whole one continuous line of railroad, and running in the whole or in the main in the same general direction of the line or route indicated in the articles of association of said Lexington, Chillicothe and Gulf railroad;

And whereas it is desired by and advantageous to all concerned in and about said two several railroad companies herein named to consolidate in the whole and in the main and form one company owning and controlling such continuous and connected line of railroad, having and possessing all the rights, powers, privileges, and immunities and subject to all the obligations and liabilities, to the State or otherwise, which belonged to or vested in or rested upon either of said two several companies desiring to make and construct said continuous line of railroad:

Now, therefore, these articles of consolidation and agreement, made and entered into and approved and ratified by and between said Lexington, Chillicothe and Gulf Railroad, on the one part, and said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, of the other part, witnesseth:

152 That said two several railroad companies are hereby consolidated and formed into one company, with all the powers,

rights, privileges, and immunities which belonged to or vested in or rested upon either of said companies, upon the following terms and stipulations and considerations, viz:

First. The corporate name of this association or consolidated company shall be the Lexington, Lake and Gulf Railroad Company, and shall continue for the term mentioned in the original articles of association of said Lexington, Chillicothe and Gulf Railroad Company, and which consolidated company shall have and continue its office and general place of business at Lexington, La Fayette county, Missouri.

Second. The intention and objects of this said consolidated company shall be the constructing, maintaining, and operating a railroad for public use in the conveyance of persons and property, and to form one company, owning and controling one continuous and connected line of railroad, commencing at the said city of Lexington, in La Fayette county, Missouri, and running thence southwardly along the line and route as indicated in the articles of association of the original Lexington, Chillicothe and Gulf Railroad Company, to the south boundary line of said La Fayette county, in the vicinity of the town of Chapel Hill, in said La Fayette county, and thence and therefrom running along the line and route as mentioned and indicated in the articles of association of said original Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, to such point in Bates county as may be required and found most convenient for said consolidated company to demand, receive, and
avail itself of the subscriptions heretofore voted to the capital
153 stock of said original Lexington, Chillicothe and Gulf Rail-
road Company by the township of Grand River or Mt. Pleasant, or either one of them, in said Bates county, and thence to such point in and through said Bates county as may be found most advantageous and convenient to connect with railroads constructed or to be constructed in the State of Kansas, or to extend said consolidated road on southward through such counties in the State of Missouri as may be most advantageous to connect or consolidate same with railroads leading to the States of Arkansas, Texas, or the Gulf of Mexico.

Third. The length of such consolidated road shall be as indicated in the articles of association of said Lexington, Chillicothe and Gulf Railroad Company, or of such length as said consolidated company may hereafter see proper to make and extend same according to law, and for the present shall be constructed into and through the counties named in said two several companies, and the capital stock shall be two millions of dollars, same as stipulated in the original charter of said Lexington, Chillicothe and Gulf Railroad Company.

Fourth. That all certificates of stock of the two several companies shall be called in and new certificates of stock shall be issued to those owning or entitled to the same in lieu of the original stock, in the name of the new consolidated company, and all persons who are or may be entitled to certificates of stock in said two several companies and not having yet received the same shall have such certificates of stock issued to them upon satisfactory proof and demand in the name of the new consolidated company.

Fifth. Immediately upon the consolidation of said two several companies, as provided by law, said new or consolidated company to have and shall be empowered and possessed of all 154 and singular the powers, rights, privileges, and immunities, and subject to all the obligations and liabilities to the State with contractors, engineers, or otherwise, which belonged to or vested in or rested upon either of the said two several companies hereto making this consolidation and signing this agreement and articles; and said new or consolidated company to become and constitute one company, under the name of the Lexington, Lake and Gulf Railroad Company; that all property and franchises of said two several companies are hereby merged in one company; that the corporate names of said two several companies shall from the date of the said consolidation cease, and said new or consolidated company to take and exercise all and singular the rights, powers, and privileges to solicit and receive subscriptions to the capital stock of said new or consolidated company as might or could have been done by said two several railroad companies or either one of them; and, further, said new or consolidated company to have and possess full and complete power and authority and right in law or equity to demand, sue for, recover, receive, and receipt for all and every such sum as may have been, are now, and may be subscribed to, voted, or pledged to the capital stock of said two several railroad companies or either one of them by individuals, counties, townships, towns, or otherwise; so that said consolidated company shall have full power and authority to have, use, and to own all and every the assets of said two several companies or subscriptions made or to be made, whether absolute or conditional, to the capital stock of said companies or either one of them, as fully and to all intents and purposes as either of said railroad companies might or could have done and performed had these articles of consolidation never have been 155 concluded and entered into.

Sixth. That said new or consolidated company shall have and be possessed of and with all the powers, rights, and privileges and immunities in the building, operating, construction, or maintaining said new line of railroad that belonged or appertained in law or otherwise to said two several railroad companies or either one of them.

Seventh. That the stock now subscribed by individuals residing in the counties of Johnson, Jackson, and Cass to said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, as well as the subscriptions now voted by the townships of Pleasant Hill, Polk, and Austin, in said county of Cass, and the township of Van Buren, in the county of Jackson, all in the State of Missouri, shall be expended by said new or consolidated company in the construction of the road-bed and other necessary expenses appertaining thereto, including engineering expenses or any other proper expenses, exclusively upon the line and road of said consolidated company through and in the counties of Johnson, Jackson, and Cass, as hereinbefore designated, and then only upon the terms, conditions, and limitations upon which said subscriptions were voted to the capital stock of said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, as set forth in the petitions of the tax-payers of the said several townships last named to the county courts of said respective counties asking for said vote and subscriptions.

Eighth. The number of directors who shall manage the affairs of said new or consolidated company shall be thirteen in number, and
of which said number, after the next election for directors for
156 said consolidated company, as required by law, seven mem-
bers and directors thereof shall be residents of and annually elected from that portion of the country on the line of said railroad north of the south line of said La Fayette county; one from the county of Johnson or Jackson; three from the county of Cass, and two from the county of Bates or some county south of said county of Bates.

Ninth. The members of the boards of directors of said two several companies, who shall be directors in and manage the affairs of said new or consolidated company until such time as elections are required for directors for said consolidated company by law, shall be and are the seven members of the board of directors of said original Lexington, Chillicothe and Gulf Railroad Company now resident of said La Fayette county and constituting the board of directors for said last-named company for said La Fayette county, and six of such members of said board of directors now managing the affairs and acting in said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company as may be designated and elected by said directors for La Fayette county in said new or consolidated company, and the offices and functions now had and discharged by said directors of La Fayette county to continue in said consolidated company until the expiration of the time thereof and the first meeting of said new board of directors, to be had under the call of the president thereof, as aforesaid, or any three members thereof.

Tenth. The consolidation of said Lexington, Chillicothe and Gulf Railroad Company and said Pleasant Hill Division of the Lexington,
Chillicothe and Gulf Railroad Company is formed and
157 entered into under and by virtue of an act of the General As-
sembly of the State of Missouri, entitled "An act to amend chapter 63 of the general statutes," entitled of railroad companies, so as to authorize the consolidation, leasing, and extension of railroads, approved March 24th, A. D. 1870, and the provisions of which said act have before the consolidation of said two several railroad companies been ratified and accepted by each of the said two railroad companies, and also by the stockholders in each of said companies, and the provisions of which said act are herein and hereby accepted and made part of these articles of consolidation.

In witness whereof the said Lexington, Chillicothe and Gulf Railroad Company and said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, by their respective presidents thereof, under and by virtue of the resolutions and orders o

the respective boards of directors thereof heretofore had and made, have hereto, respectively, on the days hereinafter named, signed and executed the foregoing articles of consolidation of said two several railroad companies, said articlss of consolidation having been agreed upon and the terms and conditions thereof having first been ratified and approved by a majority in interest of all the stock held in each of said railroad companies at a meeting of the stockholders of said two several companies regularly called for that purpose. Signed this 26th day of Sept., A. D. 1870, by the said Lexingington, Chillicothe and Gulf Railroad Company, by the president thereof, and attested by the seal of said company and signature of the secretary for the time being, and also signed this 27th day of Sept., A. D. 1870, on the part of said Pleasant Hill Division of the
Lexington, Chillicothe and Gulf Railroad Company, by the
158 president thereof, and attested by the seal of said company
and signature of the secretary.

[SEAL.] LEXINGTON, CHILLICOTHE AND
GULF R. R. CO.,
By JOHN REID, *President.*
GREEN D. SATTERFIELD, *Secretary.*

[U. S. Revenue Stamp, $1.00.]

[SEAL.] PLEASANT HILL DIVISION OF THE
LEXINGTON, CHILLICOTHE AND
GULF RAILROAD CO.,
By THEODORE STANLEY, *President.*
JOHN F. LAWDER,
Secretary P. H. Div., L., C. and G. R. R. Co.

OFFICE OF THE PLEASANT HILL DIVISION OF THE
LEXINGTON, CHILLICOTHE AND GULF RAILROAD COMPANY,
PLEASANT HILL, *Sept. 28th,* 1870.

I, John F. Lawder, secretary of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Co., do hereby certify that the foregoing articles of consolidation are a true copy of the original made and entered into on the day and dates therein set forth by the respective companies who are parties thereto, as the same appears on the records of the proceedings of this company.

In witness whereof I hereunto set my hand this 28th day of September, A. D. 1870.

JOHN F. LAWDER,
Secretary P. H. Div., L., C. and G. R. R. Co.

Endorsed: Recorded on pages 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, Book Railroad Association. Francis Rodman, secretary of state. Filed October 4th, 1870. Francis Rodman, secretary of state.

159 5th. The proceedings had in the county court of Jackson county, Missouri, under which the county court assumed power and authority to issue the bonds and coupons set forth and described in plaintiffs's petition are in words and figures as follows, to wit:

STATE OF MISSOURI, }
County of Jackson, } *ss:*

In the Jackson County Court. August Term, A. D. 1870.

Be it remembered that at the term aforesaid and on the second day of said month, amongst others, the following proceedings were had and made, viz:

"Now, at this date, come John W. Tate and 57 others, by their written petition, and ask the court to order an election of the qualified voters of Van Buren township to test the sense of the people in regard to said township's subscribing the sum of fifty thousand dollars to the capital stock of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company upon the following terms and conditions, viz:

First. The said railroad commencing at Chillicothe; thence via the city of Lexington, in La Fayette county, State of Missouri; thence to or near the town of Hopewell, in said county of La Fayette and State aforesaid; thence in a southwardly direction through said Van Buren township, Jackson county, Missouri, to the town of Pleasant Hill, Cass county, Missouri, and shall run through or within one-half mile of the limits of Easley's first addition to the town of Lone Jack, in said Van Buren township, Jackson county, Missouri; also that a depot shall be established at said road within one-half mile of the limits of said addition.

160 Second. The construction of said road shall be commenced in good faith on or before the first day of April, eighteen hundred and seventy-one, and bonds shall be issued, in sums of not less than five hundred dollars, in the name of the County of Jackson, State of Missouri, in the payment of such subscription, and dated on the day of the delivery thereof, and shall be delivered to said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company when they shall have put the grading and bringing of said road in said Van Buren township under contract on the terms and conditions herein set forth. Said bonds shall be payable, principal and interest, in gold, at the Bank of America, in the city and State of New York, as follows: One-fifth in sixteen years from date; one-fifth in seventeen years from date; one-fifth in eighteen years from date; one-fifth in nineteen years from date, and one-fifth in twenty years from date, and shall bear interest at the rate of six per cent. per annum, interest payable semi-annually on the coupons of interest attached to said bonds.

Third. When the sum of one hundred dollars is paid by any person or persons as taxes upon said subscription, then and in that event said company shall issue to such person or persons stock in said company to the amount of taxes thus paid, said stock to be issued in shares of one hundred dollars each.

Which said petition is by the court received and heard and ordered that an election be held in said township on Tuesday, August 30, 1870, to test the sense of the qualified voters of said township on said proposition. It is further ordered that the clerk of this court prepare suitable poll-books and forward them to the judges
161 of election hereinafter appointed."

And afterwards, to wit, at the September term, 1870, and on the 6th day of said month, amongst others, the following proceedings were had and made, namely:

"In the Matter of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company.

"It appearing to the court from the certificate of the clerk of this court this day filed, as well as from the certified returns of the election heretofore ordered by this court upon the proposition to subscribe the sum of fifty thousand dollars by Van Buren township to the capital stock of the said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, that not less than two-thirds of the qualified voters of said township voting at said election are in favor of said subscription, and have voted said sum to the capital stock of said railroad company at an election held on the 30 day of August, 1870, for that purpose and in that behalf, it is therefore ordered by this court, in compliance with said election and at the application of said company, that said subscription, as voted as aforesaid, of said sum of fifty thousand dollars, by said township to the capital stock of said railroad company, be had and made and entered of record, and said subscription is now made by this court on behalf of and for said township of Van Buren aforesaid, and said subscription and sum of fifty thousand dollars to be delivered to said railroad company or to such company as said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company may consolidate with, according to the terms and conditions of the petition in the matter of said election and orders and proceedings rela-
162 tive thereto heretofore made and filed in this court."

And afterwards, to wit, at the January term, 1871, and on the 4th day of said month, amongst others, the following proceedings were had and made, viz:

"*Lexington, Lake and Gulf Railroad Company.*

"Application for the issuance of Jackson county bonds.

"Now at this day comes John Reid, president of said railroad company, and moves the court to issue fifty thousand dollars of the bonds of said county under the provisions of the order of this court made at their September term, 1870, subscribing in behalf of Van Buren township fifty thousand dollars to the capital stock of said Company, and the court being satisfied that all the conditions in said subscription contained authorizing the issuance of said bonds have been complied with on the part of said company, orders and decrees that fifty bonds of the denomination of one thousand dollars each, in the name of Jackson county, for and in behalf of Van Buren township, in said county, be issued, said bonds all to be dated the 4th of January, 1871, all interest and principal payable in gold at the Bank of America, city and State of New York, and all bearing six per cent. interest per annum from date until paid; ten of said bonds to be made payable on the 4th day of January, 1887; ten

thereof on the 4th day of January, 1888; ten thereof on the 4th day of January, 1889; ten thereof on the 4th day of January, 1890, and ten thereof on the 4th day of January, 1891; the interest upon all of said bonds to be made payable semi-annually, and each of said bonds thereto coupons for the semi-annual interest according thereon. And
it is further ordered that the presiding justice of this court affix
163 his signature as such presiding justice to each and every of
said bonds, and that the clerk of this court affix his signature
as such clerk to each and every of said bonds, as well as each and every coupon to said bonds attached, and that said bonds when so executed shall be delivered to John Reid, president of said railroad company."

I, William Z. Hickman, clerk of the county court within and for the county and State aforesaid, do hereby certify that the foregoing is truly copied from the original orders of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in the city of Independence, this 29th day of September, A. D. 1879.

[SEAL.] WILLIAM Z. HICKMAN, *Clerk*,
By J. W. SWEARINGEN, *D. C.*

6th. Taxes were annually levied by the county court of Jackson county, Missouri, on the tax-payers of Van Buren township, in said county, for the several years from the date of said bonds up to and inclusive of the year 1875, which taxes were by the people paid, and from the proceeds of which the coupons maturing on all the bonds so issued by said county on behalf of said township, including those described by plaintiff in its several petitions, were annually paid off and discharged by order of said county court up to and inclusive of the year last aforesaid.

7th. The statute laws of the State of New York in reference to the rate and amount of interest to be paid on money due and withheld from the year 1875 to the date of trial of this case may and shall be
considered in evidence in this case.
164 And plaintiff's petition may be considered as sufficient to
entitle the plaintiff to have and recover on its coupons such rate of interest as the laws of New York may have allowed at the time, provided the court shall be of the opinion that the rate of interest in New York for the time being shall control in the trial of the case.

8th. This case shall be set down for hearing on the 16th day of June, 1884, or as soon thereafter as the court can hear the same; and on the trial thereof either party may introduce any additional evidence in his power, either documentary or oral, and the same when taken shall be preserved as a part of the facts of the case and be considered by the court in connection with the facts herein agreed upon.

If either party shall be unable to get ready for trial at the time herein agreed on he may apply for a continuance as in other cases and for the same reasons.

J. B. HENDERSON,
For Plaintiff.
TICHENOR, WARNER AND DEAN AND
GATES AND WALLACE,
For Defendant.

And afterwards, to wit, on the 10 day of July, A. D. 1884, a blank form of the bond sued on was filed in the office of the clerk of this court in words and figures as follow, to wit:

No. —. $1,000.

UNITED STATES OF AMERICA.

STATE OF MISSOURI, *County of Jackson:*

Issued pursuant to articles of consolidation in payment of stock due the Lexington, Lake and Gulf Railroad Company; consolidated October 4, A. D. 1870.

165 Know all men by these presents that the County of Jackson, in the State of Missouri, acknowledges itself indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company in the sum of one thousand dollars, which sum the said County of Jackson, for and in behalf of Van Buren township therein, promises to pay in gold to said Lexington, Lake and Gulf Railroad Company or bearer, at the Bank of America, in the city and State of New York, on the — day of ——, A. D. 187–, together with interest in gold thereon from the — day of ——, A. D. 187–, at the rate of six per cent. per annum, which interest shall be payable semi-annually on the presentation and delivery at said Bank of America of the coupons of interest thereto attached—

This bond being issued under and pursuant to an order of the county court of Jackson county by virtue of an act of the General Assembly of the State of Missouri approved March 23rd, 1868, entitled "An act to facilitate the construction of railroads in the State of Missouri," and authorized by a vote of the people taken August 30th, 1870, as required by law, upon the proposition to subscribe fifty thousand dollars to the capital stock of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, which said railroad company last aforesaid and the former Lexington, Chillicothe and Gulf Railroad Company were, on the 4th day of October, 1870, consolidated, as required by law, into one company, under the name of the Lexington, Lake and Gulf Railroad Company.

166–176 And which said last-named railroad company, as provided by law, and under the terms of said consolidation thereof, possesses all the powers, rights, and privileges, and owns and controls all the assets, subscriptions, bonds, moneys, and properties whatever of the two said several companies forming said consolidation or either one of them.

In testimony whereof the said County of Jackson has executed this bond by the presiding justice of the county court of said county, under the order thereof, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court. This done at the city of Independence, county of Jackson, this — day of ——, A. D. 187–.

—— ——,
Presiding Justice of the County Court of Jackson County, Mo.

—— ——,
Clerk of the County Court of Jackson County, Mo.

$30. $30.

CITY OF INDEPENDENCE,
JACKSON COUNTY, MO., —— —, *A. D.* 187–.

The County of Jackson acknowledges to owe the sum of thirty dollars in gold, payable to bearer, on the — day of ——, 18—, at the Bank of America, in the city and State of New York, for six months' interest on bond No. —.

—— ——,
Clerk County Court, Jackson County, Mo.

(Here follows 41 other coupons, omitted in printing. See page 209.)

177 And afterwards, to wit, at the regular May term, 1884, of said court, and on the 16th day of June, 1884, the following entry appears of record, to wit:

NINTH NATIONAL BANK *against* COUNTY OF JACKSON.

This day come the parties, by their attorneys, and this cause being called for hearing the trial of the issues is proceeded with and the premises are submitted to the court, with leave to file briefs in three weeks.

And afterwards, at an adjourned day of the regular October term, 1884, of said court, and on the 16th day of December, 1884, the following entry appears of record, to wit:

NINTH NATIONAL BANK *against* COUNTY OF JACKSON.

This day come the parties, by their attorneys—the plaintiff by J. B. Henderson, and the defendant by Gates and Wallace and C. O. Tichenor—and this cause being called for hearing, the same is argued by counsel and submitted to the court upon the pleadings and proofs; and upon due consideration of the premises, the court doth find that the defendant is indebted to the plaintiff by reason of the matters alleged in the petition in the sum of twenty-six thousand one hundred and nine dollars and twenty-one cents ($26,109.21).

It is therefore considered by the court that the plaintiff, The Ninth National Bank of the City of New York, recover against the defendant, The County of Jackson, in the State of Missouri, the
178 said sum of twenty-six thousand one hundred and nine dollars and twenty-one cents ($26,109.21), so found to be due,

with its costs, to be collected, if necessary, by mandamus against the county court of said county, commanding it to levy and collect from the township of Van Buren, in said county, a special tax according to law for the payment of said judgment, interests, and costs, and to pay the same.

And afterwards, to wit, at said term of said court, and on the 17th day of December, 1884, the following entry is of record in said cause, to wit:

NINTH NATIONAL BANK *against* COUNTY OF JACKSON.

This day comes the defendant, by its attorney, and files motion for a new trial of this cause; said motion for a new trial is in the words and figures following, to wit:

In the United States Circuit Court.

THE NINTH NATIONAL BANK OF THE CITY OF NEW YORK
ag't
JACKSON COUNTY.

Now comes defendant and moves to set aside findings of court, and for new trial, for the following reasons:

1st. The finding is against the law.
2nd. The finding is against the evidence.
3rd. The court erred in refusing to give the declaration of law prayed by defendant.
4th. The court erred in making a finding of facts.
179 5th. The finding should have been for defendant instead of plaintiff.

E. P. GATES AND
C. O. TICHENOR,
Attorneys of Defendant.

And afterwards, to wit, at the regular May term, 1885, and on the 16th day of May, 1885, following entry appears of record, to wit:

NINTH NATIONAL BANK *against* COUNTY OF JACKSON.

This day come the parties, by their attorneys—the plaintiff, by J. B. Henderson, and the defendant, by C. O. Tichenor—and the defendant presents to the court special findings and bill of exceptions in the above-entitled cause, which are by the court signed and ordered to be made a part of the record herein.

Said bill of exceptions is in the words and figures following, to wit:

In the Circuit Court of the United States in and for the Western Division of the Western District of Missouri.

NINTH NATIONAL BANK OF NEW YORK
against
JACKSON COUNTY.

Be it remembered that on the — day of the regular Oct. term of the court for the year 1884, the above cause coming on to be heard, after the hearing of the evidence, the court doth make therein the following special findings:

NINTH NATIONAL BANK OF THE CITY NEW YORK
against
JACKSON COUNTY, on behalf of Van Buren Township.
Nos. 448 & 776.

180 Now come the parties, by their attorneys—the plaintiff, by J. B. Henderson, Esq., and the defendant, by C. O. Tichenor and Gates & Wallace—and a jury having been waived, the cause is submitted to the court for trial on the pleadings and on the stipulation of counsel and on the testimony of witnesses examined in said cause; and the court thereupon makes the following special finding of facts in said case:

On the 14th day of July, 1870, the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company was organized by articles of association formed under the general railroad law of the State of Missouri. The articles are as follows:

SEC. 1. The name of this association shall be the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, and shall continue for the term of one hundred years.

SEC. 2. The objects of this association shall be the construction, maintaining, and operating a railroad for public use in the conveyance of persons and property, and eventually to consolidate with and form a link in and be a part of the main line of the said Lexington, Chillicothe and Gulf R. R. Co.

SEC. 3. The places from and to which said railroad is to be constructed, maintained, and operated *is* as follows: Commencing on the south boundary line of La Fayette county, in the State of Missouri, in the vicinity of the town of Chapel Hill, in La Fayette county, and thence running southwestwardly from said commencing point along the most advantageous route, within one quarter of a mile of the Lone Jack tree, in the vicinity of Lone Jack, in Jackson county, Missouri, to the city of Pleasant Hill, in the county 181 of Cass, in said State, and thence southwardly along the best and most advantageous route by way of the town of Austin, in said Cass county, to such point at or near the south boundary line of said Cass county as may be found most advantageous to intersect and consolidate with the said Lexington, Chillicothe and Gulf Railroad Company.

SEC. 4. The length of said road shall be, as nearly as possible, thirty-six miles, and shall be made into or through the counties of Johnson, Jackson, and Cass, in said State of Missouri.

SEC. 5. The amount of capital stock of said company shall be one million dollars, divided into ten thousand shares of one hundred dollars each.

SEC. 6. The names and places of residence of the directors who shall manage the affairs of the company for the first year, and until others are chosen and qualified in their places, are as follows:

Names.	Residences.
John W. Reid	Lexington, La Fayette Co., Mo.
John T. Crisp	Independence, Jackson Co., Mo.
Joseph Ragsdale	Near Chapel Hill, Johnson Co., Mo.
John W. Tate	Lone Jack, Jackson Co., Mo.
Daniel Rheem	" " " " "
Theodore Stanley	Pleasant Hill, Cass Co., Mo.
Charles B. Dunbaugh	" " " " "
Clayton Van Hay	" " " " "
Andrew Allen	" " " " "
Andrew A. Zick	" " " " "
W. H. H. Cundiff	" " " " "
J. H. Nash	Austin, Cass Co., Mo.
John Crum	" " " "

182 Sec. 7. This association is organized under and subject to chapters 62 and 63 of the general statutes of the State of Missouri and the acts of the General Assembly amendatory thereto.

These articles of association were properly signed by the subscribers to an amount of stock sufficient under the law to justify organization, and were sworn to and properly authenticated and filed and recorded in the office of the secretary of state of the State of Missouri on the 18th day of July, 1870.

II.

After the organization of said company, to wit, on the 2nd day of August, 1870, the following proceedings were had, at a regular term of the county court of Jackson county, to wit:

"Be it remembered that at the term aforesaid and on the 2nd day of said month the following proceedings were had:

Now, at this day, come John W. Tate and fifty-seven others, by their written petition, and ask the court to order an election of the qualified voters of Van Buren township to test the sense of the people in regard to said township's subscribing the sum of fifty thousand dollars to the capital stock of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company upon the following terms and conditions, to wit:

First. The said railroad commencing at Chillicothe; thence via the city of Lexington, in La Fayette county, State of Missouri; thence to or near the town of Hopewell, in said county of La Fayette and State aforesaid; thence in a southwesterly direction
183 through said Van Buren township, Jackson county, Missouri, to the town of Pleasant Hill, Cass county, Missouri, and shall run through or within one-half mile of the limits of Easly's first addition to the town of Lone Jack, in said Van Buren township, Jackson county, Missouri; also that a depot shall be established at said road within one-half mile of the limits of said addition.

Second. The construction of said road shall be commenced in good faith on or before the first day of April, 1871, and bonds shall be issued in sums of not less than two hundred dollars, in the name of the county of Jackson, in the State of Missouri, in payment of such subscription, and dated on the day of the delivery thereof, and shall be delivered to the said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company when they shall have put the grading and bridging of said road in said Van Buren township under contract on the terms and conditions herein set forth. Said bonds shall be payable, principal and interest, in gold, at the Bank of America, in the city and State of New York, as follows: One-fifth in sixteen years from date; one-fifth in seventeen years from date; one-fifth in eighteen years from date; one-fifth in nineteen years from date, and one-fifth in twenty years from date, and shall bear interest at the rate of six per centum per annum, interest payable semi-annually, on the coupons of interest attached to said bonds.

Third. When the sum of one hundred dollars is paid by any person or persons as taxes upon said subscription, then and in that event said company shall issue to such person or persons stock in said company to the amount of taxes thus paid, said stock to be issued in shares of one hundred dollars each.

184 Which said petition is by the court received and heard and ordered that an election be held in said township on Tuesday, August 30th, 1870, to test the sense of the qualified voters of said township on said proposition. It is further ordered that the clerk of this court prepare suitable poll books and forward them to the judges of election hereinafter appointed."

III.

The election was held in the township according to the provisions of the act to facilitate the construction of railroads in the State of Missouri, approved February 23rd, 1868, and the returns of the election were duly made to the county court at the September term of said court, 1870, and on the 6th day of said month the following proceedings were had, to wit:

"In the matter of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company—

It appearing to the court from the certificate of the clerk of this court this day filed, as well as from the certified returns to the election heretofore ordered by this court, upon the proposition to subscribe the sum of fifty thousand dollars by Van Buren township to the capital stock of the said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company that not less than two-thirds of the qualified voters of said township voting at said election are in favor of said subscription and have voted said sum to the capital stock of said railroad company, at an election held on the 30th day of August, 1870, for that purpose and on that behalf.

It is therefore ordered by this court, in compliance of said election and at the application of said company, that said sub-
185 scription, so voted as aforesaid, of said sum of fifty thousand
dollars by said township to the capital stock of said railroad
company be had and made and entered of record, and the said sub-

scription is now made by this court on behalf of and for said township of Van Buren as aforesaid, and said subscription and sum of fifty thousand dollars to be delivered to said railroad company or to such company as said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company may consolidate with, according to the terms and conditions of the petition in the matter of said election and the orders and proceedings relative thereto heretofore made and filed in this court."

IV.

There is no evidence before the court that the said railroad company ever had or kept any regular stock book for the entry or subscription of stock by subscribers after its organization; but the directors, in their testimony before the court state that they were all personally in favor of securing the stock subscriptions in Van Buren township, in Jackson county, and of Pleasant Hill, Polk, and Austin townships, in Cass county.

By their testimony and by that of the directors and officers of the Lexington, Chillicothe and Gulf Railroad Company it is established that between the southern line of La Fayette county and the northern line of Bates county the subscriptions along the line of the Lexington, Chillicothe and Gulf Railroad Company, as located, were not sufficient to build the road, and the Pleasant Hill Division Company was organized with a view and for the purpose of deflecting and changing the line of the Lexington, Chillicothe and Gulf
186 railroad to a route that promised a sufficient amount of stock
subscriptions to complete the road; and the organization of the Pleasant Hill Division was originally contemplated and made with a view of consolidating with the said Lexington, Chillicothe and Gulf Railroad Company, and the purpose of this consolidation was to abandon so much of the line of the Lexington, Chillicothe and Gulf Company as lay between the points aforesaid, and to substitute therefor the line of the Pleasant Hill Division, on which the said township subscriptions as aforesaid were supposed to furnish a sufficient fund to grade the road.

After the organization of said company different directors, by the common consent and general understanding of all the directors, went into said respective townships to canvass for said subscriptions, and, after the vote had been taken in Van Buren township, Tilton Davis, the attorney for the Pleasant Hill Division Company, prepared the order of the county court by which the vote of the township was canvassed and by which the county court ordered the subscription of the stock of Van Buren township to the aforesaid company, the said order being dated the 6th day of September, 1870. No one of the directors remembers that any subscription of the stock of Van Buren township was actually made in the stock books of the Pleasant Hill Company or in those of the consolidated company by the county court, nor do they remember that either of said companies had or kept any stock books at all, and they do not remember that any action was ever taken by the board of directors as a board accepting such subscription; but all the members of the board were individually in favor of the subscription and had 187 favored the vote in Van Buren and other townships named.

Whatever books or other memoranda were kept by the Pleasant Hill Company were turned over to the consolidated company after the consolidation. No stock was ever issued by said Pleasant Hill Company or by the consolidated company or by any company on account of said subscription and bonds.

The county court of Jackson county, on the return of the vote of the people on the proposition to subscribe said stock made and entered on the records an order declaring that the necessary vote had been given for the proposition, and that "the sum of fifty thousand dollars by said township to the capital stock of said railroad company (the Pleasant Hill Division Co.) be had and made and entered of record, and said subscription is now made by this court on behalf of and for said township of Van Buren aforesaid," and in and as part of said order it is declared and so entered of record that this subscription is so made "at the application of said company."

The Pleasant Hill Division Company in framing its articles of consolidation, which were approved and adopted by the stockholders and the board of directors thereof previous to the act of consolidation, referred to this as a subscription to its capital stock and undertook by its articles to convey it as an asset to the new or consolidated company.

Previous to the organization of the Pleasant Hill Division Company, to wit, on the 13th day of August, 1869, the Lexington, Chillicothe and Gulf Railroad Company had been organized by the formation of the following articles, to wit:

"Articles of association of the Lexington, Chillicothe and Gulf Railroad Company, made and entered into this 13th day of August, one thousand eight hundred and sixty-nine.

188 Sec. 1. The name of this association shall be the Lexington, Chillicothe and Gulf Railroad Company, and shall continue for the term of one hundred years.

Sec. 2. The object of this association is the constructing, maintaining, and operating a railroad for public use in the conveyance of persons and property.

Sec. 3. The places from which and to which this railroad is to be constructed, maintained, and operated are as follows: Commencing at the city of Lexington, in La Fayette county, Missouri, and thence running southwardly from said city of Lexington and east of the head-waters of the Little Sni creek, by the way of Mount Hope, in said county, to Holden, on the Pacific railway, in Jackson county, and thence through East Sugar Creek township, in Cass county; thence southwardly in the direction of Butler, in Bates county, and thence southwardly to such point in said Bates county as may be found most advantageous to connect said railroad with Fort Scott, Kansas.

Sec. 4. The length of said railroad shall be, as near as may be, seventy-five miles, and shall be made into or through the counties of La Fayette, Johnson, Cass, and Bates.

Sec. 5. The amount of capital stock of said company shall be two millions of dollars, divided into twenty thousand shares of one hundred dollars each.

Sec. 6. The names and places of residence of the directors who shall manage its affairs for the first year, and until others are chosen and qualified in their places, are as follows:

Isaiah Nichols, Barney A. Crain, and Hosea H. Moore, Holden,
Mo.; Henry V. Stall, Cass Co., Mo.; John A. Winson, Bates Co., Mo.;
Alex. K. Owens, Bates Co., Mo.; Andrew Ritchie, Altoona, Bates Co.,
Mo.; Michael Pickett, Butler, Bates Co., Mo.; John Reid, J.
189 T. Atkinson, Tilton Davis, Green D. Satterfield, and Charles
L. Ewing, La Fayette Co., Mo.

Sec. 7. This association is organized under and subject to chapters 62 and 63 of the general statutes of the State of Missouri."

These articles of association were completed by the subscription of the necessary amount of stock and were authenticated by the oaths of the directors and filed in the office of the secretary of state of the State of Missouri and recorded, as required by law, on the 25th day of August, 1869.

VI.

On the 4th day of October, 1870, articles of consolidation, formed and entered into according to the law of the State of Missouri, between the Lexington, Chillicothe and Gulf Railroad Company and the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, were filed in the office of the secretary of state of the State of Missouri. Those articles are in the following words, to wit:

And whereas said Lexington, Chillicothe and Gulf Railroad Company have commenced and will soon complete the construction of that part of said last-named railroad being within La Fayette county, but find it impossible and impracticable to commence or complete that part of said railroad indicated in the charter of said company and lying and being in and through the limits of said Johnson county and East Sugar Creek township, in Cass county;

And whereas said Pleasant Hill Division of said Lexington, Chillicothe and Gulf Railroad Company have commenced the construction of said last-named road;

And whereas both said railroad companies have con-
190 structed parts of each said respective railroads and desire the
consolidation thereof;

And whereas the line or route of said railroad indicated in the charter of said Pleasant Hill Division of said Lexington, Chillicothe and Gulf Railroad Company obviates the obstacles aforementioned and connects the line of said Lexington, Chillicothe and Gulf Railroad Company in Bates county with that part of said last-mentioned road in La Fayette county, and which said two lines of railroad, when completed and connected, will form in the main and whole one continuous line of railroad, and running in the whole as in the main in the same general direction of the line of road indicated in the articles of association of said Lexington, Chillicothe and Gulf railroad;

And whereas it is desired by and advantageous to all concerned in and about said two several railroad companies herein named to consolidate in the whole and in the main and form one company owning and controlling such continuous and constructed line of railroad, having and possessing all the powers, rights, privileges, and immunities and subject to all the obligations and liabilities, to the State or otherwise, which belonged to or vested in or rested upon either of said two several companies desiring to make and construct said continuous line of railroad:

Now, therefore, these articles of consolidation and agreement, made and entered into and approved and ratified by and between said Lexington, Chillicothe and Gulf Railroad Company, of the one part, and said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, of the other part, witnesseth:

191 That said two several companies are hereby consolidated and formed into one company, with all the powers, rights, privileges, and immunities which belonged to or vested in or rested upon either of said companies, upon the following terms and stipulations and considerations, viz:

First. The corporate name of this association or consolidated company shall be the Lexington, Lake and Gulf Railroad Company, and shall continue for the term mentioned in the original articles of association of said Lexington, Chillicothe and Gulf Railroad Company, and which said consolidated company shall have and continue its office and general place of business at the city of Lexington, La Fayette county, Missouri.

Second. The intention and objects of this consolidated company shall be the construction, maintaining, and operating a railroad for public use in the conveyance of persons and property, and to form one company, owning and controlling one continuous and connected line of railroad, commencing at the said city of Lexington, in La Fayette county, Missouri, and running thence southwardly along the line and route as indicated in the articles of association of the original Lexington, Chillicothe and Gulf Railroad Company, to the south boundary line of said La Fayette county, in the vicinity of the town of Chapel Hill, in said La Fayette county, and thence and therefrom running along the line and road as mentioned and indicated in the articles of association of said original Pleasant Hill Division of said Lexington, Chillicothe and Gulf Railroad Company, to such point in Bates county, Missouri, as may be required and found most convenient for said consolidated company to demand, receive, and avail itself of the subscriptions heretofore voted to the capital stock of said original Lexington, Chillicothe and Gulf Railroad
192 Company by the townships of Grand River and Mt. Pleasant, or either of them, in said Bates county, as may be found most advantageous and convenient to connect with railroads constructed or to be constructed in the State of Kansas, or to extend said consolidated road southward through such counties in the State of Missouri as may be found most advantageous to connect or consolidate

same with railroads leading to the States of Arkansas, Texas, or the Gulf of Mexico.

Third. The length of said consolidated road shall be as indicated in the articles of association of said Lexington, Chillicothe and Gulf Railroad Company, or of such length as said consolidated company may hereafter see proper to make and extend same according to law, and for the present shall be constructed into and through the counties named in said two several companies, and the capital stock shall be two millions of dollars, same as stipulated in the original charter of said Lexington, Chillicothe and Gulf Railroad Company.

Fourth. That all certificates of stock of the two several companies shall be called in and new certificates of stock shall be issued to those owning and entitled to the same in lieu of the original stock, in the name of the new consolidated company, and all persons who are or may be entitled to certificates of stock in said two several companies and not having yet received the same shall have such certificates of stock issued to them upon satisfactory proof and demand in the name of the new consolidated company.

Fifth. Immediately upon the consolidation of said two several
companies, as provided by law, said new or consolidated com-
pany to have and shall be empowered and possessed of all and singu-
lar the powers, rights, privileges, and immunities, and subject to
all the obligations and liabilities to the State with contract-
193 ors, engineers, or otherwise, which belonged to or vested in or
rested upon either of the said two several companies hereto
making this consolidation and signing this agreement and articles;
and said new or consolidated company to become and constitute one
company, under the name of the Lexington, Lake and Gulf Railroad
Company; that all property and franchises of said two several com-
panies are hereby merged in one company; that the corporate
names of said two several companies shall from the date of the said
consolidation cease, and said new or consolidated company to take
and exercise all and singular the rights, powers, and privileges to
solicit and receive subscriptions to the capital stock of said new or
consolidated company as might or could have been done by said
two several railroad companies or either of them.

And, further, said new or consolidated company to have and possess full and complete authority, power, and right in law or equity to demand, sue for, recover, receive, and receipt for all and every such sums as may have been and are now or may be subscribed to, voted, or pledged to the capital stock of said two several companies or either of them, by individuals, counties, townships, towns, or otherwise, so that said consolidated company shall have full power and authority to have, use, and to own all and every the assets of said two several companies or subscriptions made or to be made, whether absolute or conditional, to the capital stock of said two companies or either one of them as fully and to all intents and purposes as either of said railroad companies might or could have done and performed had these articles of consolidation never been concluded and entered on.

194 Sixth. That said new or consolidated company shall have and be possessed of and with all the powers, rights, and privileges and immunities in the building, operating, constructing, and maintaining said new line of railroad that belonged or appertained in law or otherwise to said two several railroad companies or either one of them.

Seventh. That the stock now subscribed by individuals residing in the counties of Jackson, Johnson, and Cass to said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, as well as the subscriptions now voted by the townships of Pleasant Hill, Polk, and Austin, in said county of Cass, and the township of Van Buren, in the county of Jackson, all in the State of Missouri, shall be expended by said new and consolidated company in the construction of the road-bed and other necessary expenses appertaining thereto, including engineering expenses or any other proper expenses, exclusively upon the line and road of said consolidated company through and in the counties of Johnson, Jackson, and Cass, as hereinbefore designated, and then only upon the terms, conditions, and limitations upon which said subscriptions were voted to the capital stock of said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, as set forth in the petitions of the tax-payers of the said several townships last named to the county courts of said respective counties asking for said vote and subscriptions.

Eighth. The number of directors who shall manage the affairs
195 of said new or consolidated company shall be thirteen in number, and of which said number, after the next election for directors for said consolidated company, as required by law, seven members and directors thereof shall be residents of and annually elected from that portion of the country on the line of said railroad north of the south line of said La Fayette county; one from the county of Johnson or Jackson; three from the county of Cass, and two from the county of Bates or some county north of said county of Bates.

Ninth. The members of the board of directors of said two several companies, who shall be directors in and manage the affairs of said new or consolidated company until such time as elections are required for directors for said consolidated company by law, shall be and are the seven members of the board of directors of said original Lexington, Chillicothe and Gulf Railroad Company now resident of the county of La Fayette and constituting the board of directors for said last-named company for said La Fayette county, and six of such members of said board of directors now managing the affairs and acting in said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company as may be designated and elected by said directors for La Fayette county in said new or consolidated company, and the offices and functions now had and discharged by said directors of La Fayette county to continue in said consolidated company until the expiration of the terms thereof and the first meeting of said new board of directors, to be had under the call of the president thereof, as aforesaid, or any three members thereof.

Tenth. This consolidation of said Lexington, Chillicothe and Gulf
Railroad Company and said Pleasant Hill Division of the Lexington,
Chillicothe and Gulf Railroad Company is formed
196 and entered into under and by virtue of an act of the General
Assembly of the State of Missouri, entitled "An act to amend
chapter sixty-three of the general statutes, entitled 'of railroad consolidation,'
so as to authorize the consolidation, leasing, and extension
of railroads," approved March 24th, A. D. 1870, and the provisions of
which said act have before the consolidation of said two several railroad
companies been ratified and accepted by each of the said two
railroad companies, and also by the stockholders in each of said
companies, and the provisions of which said acts are herein and
hereby accepted and made part of these articles of consolidation.

In witness whereof the said Lexington, Chillicothe and Gulf Railroad
Company and the said Pleasant Hill Division of the Lexington,
Chillicothe and Gulf Railroad Company, by their respective
presidents thereof, under and by virtue of the resolutions and orders of
the respective boards of directors thereof heretofore had and made, have
hereto, respectively, on the days hereinafter named, signed and executed
the foregoing articles of consolidation of said two several railroad
companies, said articles of consolidation having been agreed
upon and the terms and conditions thereof having first been ratified
and approved by a majority in interest of all the stockholders in
each of said railroad companies at a meeting of the stockholders of
said two several companies regularly called for that purpose.
Signed this 26th day of September, A. D. 1870, by the said Lexington,
Chillicothe and Gulf Railroad Company, by the president
thereof, and attested by the seal of said company and signature of
the secretary for the time being, and also signed this 27th
197 day of September, A. D. 1870, on the part of the said Pleasant
Hill Division of said Lexington, Chillicothe and Gulf Railroad
Company, by the president thereof, and attested by the seal of
said company and signature of the secretary.

[SEAL.] LEXINGTON, CHILLICOTHE AND
GULF RAILROAD COMPANY,
By JOHN REID, *President.*
GREEN D. SATTERFIELD, *Secretary.*

[SEAL.] PLEASANT HILL DIVISION OF THE
LEXINGTON, CHILLICOTHE AND
GULF RAILROAD COMPANY,
By THEODORE STANLEY, *President.*
JOHN F. LAWDER,
Secretary P. H. Div., L., C. and G. R. R. Co.

VII.

Work had been performed on both lines of road before the consolidation, and the articles of consolidation were in this respect and in other respects regular and according to the requirements of the statutes of the State of Missouri. The lines of road were not intended to be nor were they competing lines. The consolidation was intended to form and did form but one line, and that a continuous line of railroad running in the same general direction, and the consolidation in no manner deprived the public of competition between the said roads.

VIII.

The articles of consolidation, as hereinbefore recited, were duly filed as stated with the secretary of state and by him recorded, and a copy thereof, produced before the court, is duly certified by the said secretary of state from his office under the seal of the State.

IX.

After the consolidation was perfected, as aforesaid, to wit,
198 on the 4th day of January, 1871, and at the regular term of
the county court of Jackson county, the following proceedings
were had, to wit:

"*Lexington, Lake and Gulf Railroad Company.*

"Application for the issuance of Jackson county bonds.

"Now at this day comes John Reid, president of said railroad company, and moves the court to issue fifty thousand dollars of the bonds of said county under the provisions of the order of this court made at their September term, 1870, subscribing in behalf of Van Buren township fifty thousand dollars to the capital stock of said company, and the court being satisfied that all the conditions in said subscription contained authorizing the issuance of said bonds have been complied with on the part of said company, orders and directs that fifty bonds of the denomination of one thousand dollars each, in the name of Jackson county, for and in behalf of Van Buren township, in said county, be issued, said bonds all to be dated the 4th of January, 1871, all interest and principal payable in gold at the Bank of America, in the city of New York, and all bearing six per cent. interest per annum from date until paid; ten of said bonds to be made payable on the 4th day of January, 1887; ten thereof on the 4th day of January, 1888; ten thereof on the 4th day of January, 1889; ten thereof on the 4th day of January, 1890, and ten thereof on the 4th day of January, 1891; the interest upon all of said bonds to be made payable semi-annually, and each of said bonds to have thereto coupons for the semi-annual interest accordingly. And it is further ordered that the presiding justice of this court affix his signature as such presiding justice to each and every of said bonds, and the clerk of this court affix his signature as
such clerk to each and every of such bonds, as well as each
199 and every coupon to said bonds attached, and that said bonds
when so executed shall be delivered to Jno. Reid, president
of said railroad company."

X.

In pursuance of the foregoing order fifty bonds, each for one thousand dollars, were regularly issued and delivered to the president of the Lexington, Lake and Gulf Railroad Company, payable to said company or bearer, and they were sold on the market to various purchasers, and the proceeds thereof were faithfully used and applied in the construction of the road in Van Buren township in accordance with the vote of the people and the orders of the county court, and said railroad never was built or operated. The work on the same was abandoned in 1873, and none has been done since, and no railroad has ever been built in the said Van Buren township, but a railroad has been built and is now being operated on the line of this road from Pleasant Hill to Carthage, in Jasper county, Missouri.

XI.

The bonds thus issued, the coupons of a part of which are sued on in this action, are in the following form, to wit:

"UNITED STATES OF AMERICA.

STATE OF MISSOURI, *County of Jackson:*

Issued pursuant to articles of consolidation in payment of stock due the Lexington, Lake and Gulf Railroad Company, consolidated October 4th, A. D. 1870.

Know all men by these presents that the County of Jackson, in the State of Missouri, acknowledges itself indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company in the sum of one thousand dollars, which sum the said County
200 of Jackson, for and in behalf of Van Buren township therein,
promises to pay in gold to said Lexington, Lake and Gulf Railroad Company or bearer, at the Bank of America, in the city and State of New York, on the — day of ——, A. D. —, together with interest in gold thereon from the — day of ——, A. D. 18—, at the rate of six per cent. per annum, which interest shall be payable semi-annually on the presentation and delivery at said Bank of America of the coupons of interest hereto attached—

This bond being issued under and pursuant to an order of the county court of Jackson county by virtue of an act of the General Assembly of the State of Missouri entitled 'An act to facilitate the construction of railroads in the State of Missouri,' and authorized by a vote of the people taken August 30th, 1870, as required by law upon the proposition to subscribe fifty thousand dollars to the capital stock of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, and which said railroad company last aforesaid and the former Lexington, Chillicothe and Gulf Railroad Company were, on the 4th day of October, 1870, consolidated, as required by law, into one company, under the name of the Lexington, Lake and Gulf Railroad Company, and which said last-named railroad company, as required by law, and under the terms of said consolidation thereof, possesses all the powers, rights, and privileges, and owns and controls all the assets, subscriptions, bonds, moneys, and properties whatever of the two said several railroad companies forming said consolidation or either one of them.

In testimony whereof," etc.

These bonds were properly signed. according to the order of the court, by the presiding justice and the clerk of said county court of Jackson county.

201 The coupons are in the usual form, payable semi-annually at the Bank of America, in the city and State of New York, each coupon being for six months interest on the bond to which it is attached

XII.

After the issue and sale of the bonds aforesaid taxes were annually levied by the county court of Jackson county on the tax-payers of Van Buren township, in said county, for the several years from the date of said bonds, up to and inclusive of the year 1875, which taxes were by the people paid, and from the proceeds thereof the coupons maturing on all the bonds so issued by said county on behalf of said township, including those described by plaintiff in his petition, were paid off at maturity and discharged by order of the county court up to and inclusive of the year last aforesaid.

XIII.

The statute laws of the State of New York in force prior to the 1st day of January, 1880, provided that on all money due by contract and withheld, on which no rate of interest was specified, should bear seven per cent. per annum until paid. From and after January 1st, 1880, the legal rate of interest fixed by the laws of said State on such sums of money due and unpaid has been six per cent. per annum, and the court therefore finds that the coupons maturing before January 1st, 1880, will bear interest at seven per cent. up to said last-named date and only six per cent. thereafter, and all coupons maturing on or after the 1st day of January, 1880, will bear six per cent. per annum until paid.

XIV.

202 The plaintiff became the holder of all the coupons in suit before maturity and for value without actual notice of any other facts than those herein recited and without any notice of any defects in the issue of said bonds and coupons except such as the face of the bonds imparted to him.

XV.

The line of road covered by the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company was substantially adopted as the line of the Lexington, Lake and Gulf Railroad Company, into which it was merged by consolidation, and the line of said road was graded and partially bridged and ties provided along the route thereof, but on account of the money panic in 1873 and other difficulties it was not completed, as originally contemplated, through Van Buren township.

XVI.

The statute of the State of Missouri, under which the said bonds and coupons were issued, was approved on the 23rd day of March, 1868, and is entitled "An act to facilitate the construction of railroads in the State of Missouri." It provides that when twenty-five tax-payers and residents of a municipal township shall petition the county court to subscribe to the capital stock of any railroad company building or proposing to build a railroad into, through, or near said township "it shall be the duty of the county court, as soon as may be thereafter, to order an election to be held in such township to determine if such subscription shall be made, which election shall be conducted and returns made in accordance with the law controlling general and special elections; and if it shall appear from the returns of such election that not less than two-thirds 203 of the qualified voters of such township voting at such election are in favor of such subscription, it shall be the duty of the county court to make such subscription in behalf of such township according to the terms and conditions thereof, and if such conditions provide for the issue of bonds in payment of such subscription, the county court shall issue such bonds in the name of the county," etc.

XVII.

After the election, which was duly held under this law, the county court, by order spread upon its record, made an absolute subscription of such stock, as required by the provisions of said act.

XVIII.

It appears from the evidence that the town of Chillicothe is situated in Livingston county, Missouri, it being in the second tier of counties north of the Missouri river, and none of the three companies hereinbefore mentioned had any power or authority under their charters to build a railroad north of the Missouri river.

On the foregoing facts the court finds, as a conclusion of law, that the plaintiff is entitled to judgment for the amount of the coupons filed, with interest thereon, to be calculated according to the rule stated in the 13th clause of the special finding of facts hereinbefore recited, which is ordered accordingly.

A. KREKEL, *Judge.*

And upon said findings the court found for plaintiff and entered judgment in its favor for the whole amount sued for; to which action of the court in so finding for plaintiff and in entering said judgment defendant at the time excepted and does still except.

And, within four days after said finding and after the rendition of said judgment and during the session of the court for the said term, defendant filed its motion for a new trial, which is in words and figures following:

204 In the U. S. Circuit Court.

THE 9TH NATIONAL BANK OF THE CITY OF NEW YORK
ag'st
JACKSON COUNTY.

Now comes defendant and moves to set aside finding of court and for new trial for the following reasons:

1st. The finding is against the law.

2nd. The finding is against the evidence.

3rd. The court erred in refusing to give declarations of law prayed by defendant.

4th. The court erred in making a finding of facts.

5th. The finding should have been for defendant instead of plaintiff.

E. P. GATES & C. O. TICHENOR,
Att'ys of Def't.

Which said motion, coming on to be heard on the — day of said court for said term, was overruled; to which action of the court in so overruling said motion defendant at the time excepted and does still except.

Wherefore defendant tenders this its bill of exceptions and asks that the same may be signed, sealed, and made a part of the records of the court in this case, which is accordingly done.

A. KREKEL, [SEAL.]
Circuit Judge.

And afterwards, at said term of said court and on the 20th day of May, 1885, the following entry appears of record in said cause, to wit:

NINTH NATIONAL BANK *against* COUNTY OF JACKSON.

205 This day comes the complainant, by its attorney, J. B. Henderson, Esq., and waives service of a citation in this cause.

Afterwards, at an adjourned session of said regular May term, 1885, of said court, and on the 3rd day of August, A. D. 1885, the following entry appears of record, to wit:

NINTH NATIONAL BANK OF N. Y. *against* JACKSON COUNTY.

This day comes defendant, by Messrs. Gates & Wallace, its attorneys, and presents to the court a bond for a writ of error herein, and said bond is by the court approved and said writ of error allowed. Said bond is in words and figures as follows, to wit:

UNITED STATES OF AMERICA, *sct:*

NINTH NATIONAL BANK OF NEW YORK
vs.
JACKSON COUNTY, in State of Missouri.

Know all men by these presents that we, The County of Jackson, in the State of Missouri, as principal, and John Keirsey and P. S.

Alexander, as securities, are held and firmly bound unto The Ninth National Bank, a corporation of the State of New York, its successors and assigns, in the sum of five hundred dollars; to the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 29th day of July, A. D. 1885.

Upon this express condition, to wit: Whereas the above-named
County of Jackson has prosecuted its writ of error to the Su-
206 preme Court of the United States to reverse the judgment ren-
dered in the cause above named by the circuit court of the United States for the western division of the western district of Missouri: Now, if the above-named County of Jackson shall prosecute its said writ of error to effect and answer all damages and costs if it shall fail to make good its plea, then this obligation to be void; otherwise to remain in full force and virtue.

JOHN KEIRSEY. [SEAL.]
P. S. ALEXANDER. [SEAL.]
THE COUNTY OF JACKSON,
IN STATE OF MISSOURI,
By R. S. ADKINS, [SEAL.]
Presiding Justice, by Order of County Court of said County.

Signed and sealed in presence of—
E. ALLEN.
M. J. ALLEN.

The above bond is hereby approved and ordered to be filed and made a part of the record.

A. KREKEL, *Judge.*

UNITED STATES OF AMERICA,
Western District of Missouri, } *sct:*

John Keirsey, obligor in the within bond, being duly sworn, on oath deposes and says that he resides as stated therein and is worth, over and above all his debts and liabilities, the sum of one thousand dollars, and that he owns real & personal property to that amount, subject to execution, in the State of Missouri.

JOHN KEIRSEY.

Subscribed and sworn to before me this 29th day of July, A. D. 1885.

[SEAL.]

E. ALLEN,
Notary Public.

207 UNITED STATES OF AMERICA,
Western District of Missouri, } *ss:*

P. Alexander, obligor in the within bond, being duly sworn, on his oath deposes and says that he resides as stated therein and is worth, over and above all his debts and liabilities, the sum of one thousand dollars, and that he owns real and personal property to that amount, subject to execution, in the State of Missouri.

P. S. ALEXANDER.

Subscribed and sworn to before me this 29th day of July, A. D. 1885.

[SEAL.] E. ALLEN,
Notary Public.

UNITED STATES OF AMERICA, *sct:*

I, Henry C. Geisberg, clerk of the circuit court of the United States for the western division of the western district of Missouri, do hereby certify the foregoing to be a true and complete transcript of the record, pleadings, and proceedings in the cause therein named as fully as the same appears in my office.

Witness my hand as clerk of said court and the seal of said court hereto affixed. Done at office, in Kansas City, in said division and district, this 18th day of September, A. D. 1885.

{Seal of the United States Circuit Court, Western Division, for the Western District of Missouri.}

H. C. GEISBERG, *Clerk*,
By WARREN WATSON,
Deputy Clerk.

208 In the Supreme Court of the United States.

THE COUNTY OF JACKSON, Plaintiff in Error,
vs.
NINTH NATIONAL BANK OF THE CITY OF NEW YORK, Defendant in Error.

Now comes plaintiff in error, and for an assignment of error states—

First. The findings of the court are not sufficient to support a judgment for defendant in error.

Second. Upon the findings of the court the judgment should have been for the plaintiff in error instead of the defendant in error.

Third. The court erred in finding, as a conclusion of law, upon the facts found, that the defendant in error was entitled to a judgment.

Fourth. The judgment is against the law and the facts found.

CHARLES O. TICHENOR,
Attorney of Plaintiff in Error.

[Endorsed:] The County of Jackson, plaintiff in error, *v.* Ninth National Bank of New York. Assignment of error. Charles O. Tichenor, att'y of pl'ff in error.

209 In the Supreme Court of the United States.

THE NINTH NATIONAL BANK OF THE CITY OF NEW YORK, Defendant in Error,
ag't
THE COUNTY OF JACKSON, Plaintiff in Error.

It is hereby stipulated and agreed that in printing the record herein all that portion of the same which sets forth the coupons sued on, excepting the first coupon, may be left out, inasmuch as they are all alike in form, and to set them forth in the printed record would be a needless expense; but the clerk will state the total number of coupons.

J. B. HENDERSON,
Att'y of Defendant in Error.
CHARLES O. TICHENOR,
Att'y of Plaintiff in Error.

[Endorsed:] The County of Jackson, pl't'ff in error, *ag't* Ninth National Bank of the City of New York, def'nt in error. Stipulation as to printing record.

Endorsed on cover: W. Missouri C. C. U. S. No. 372. The County of Jackson, in the State of Missouri, plaintiff in error, *vs.* The Ninth National Bank of New York. Filed October 12, 1885.

BRIEF OF THE PLAINTIFF IN ERROR.

Supreme Court of the United States.

OCTOBER TERM, 1896.

NO. ~~[illegible]~~ 182

THE COUNTY OF JACKSON, IN THE
STATE OF MISSOURI,
Plaintiff in Error,

vs.

THE NINTH NATIONAL BANK OF
NEW YORK.

*IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES
FOR THE WESTERN DIVISION OF THE WESTERN
DISTRICT OF MISSOURI.*

C. O. TICHENOR AND
Edward P. GATES & ~~WALLACE~~,
Attorneys for the Plaintiff in Error.

Brief Publishing House of [illegible] & Co.,

BRIEF OF THE PLAINTIFF IN ERROR.

Supreme Court of the United States.

OCTOBER TERM, 1887.

NO. ~~842.~~ 182

THE COUNTY OF JACKSON, IN THE
STATE OF MISSOURI,
Plaintiff in Error,
vs.
THE NINTH NATIONAL BANK OF
NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI.

STATEMENT.

This suit was upon coupons attached to bonds issued by the County Court of Jackson County, in the State of Missouri, on behalf of Van Buren Township, in said County, under the provisions of what is known as the "Township Aid Act of 1868." The following is the form of the bonds (p. 39 of Printed Record):

"No.—— $1,000.

UNITED STATES OF AMERICA.

State of Missouri, County of Jackson.

Issued pursuant to articles of consolidation, in payment of stock due the Lexington, Lake and Gulf Railroad Company, consolidated October 4, A. D. 1870.

Know all men by these presents, that the County of Jackson, in the State of Missouri, acknowledges itself indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company in the sum of one thousand dollars, which sum the said County of Jackson, for and in behalf of Van Buren Township therein, promises to pay in gold to said Lexington, Lake and Gulf Railroad Company, or bearer, at the Bank of America, in the City and State of New York, on the——day of——, A. D. 187—, together with interest in gold thereon from the——day of——, A. D. 187—, at the rate of six per cent. per annum, which interest shall be payable semi-annually on the presentation and delivery at said Bank of America of the coupons of interest hereto attached.

This bond being issued under and pursuant to an order of the County Court of Jackson County by virtue of an Act of the General Assembly of the State of Missouri, approved March 23rd, 1868, entitled "An Act to facilitate the construction of railroads in the State of Missouri," and authorized by a vote of the people taken August 30, 1870, as required by law, upon the proposition to subscribe fifty thousand dollars to the capital stock of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, which said Railroad Company last aforesaid and the former Lexington, Chillicothe and Gulf Railroad Company were on the 4th day of October, 1870, consolidated as required by law, into one company, under the name of the Lexington, Lake and Gulf Railroad Company.

And which said last named railroad company, as provided by law, and under the terms of said consolidation thereof, possesses all the powers, rights and privileges, and owns and controls all the assets, subscriptions, bonds, money and properties whatever of the two said several companies forming said consolidation or either one of them.

In testimony whereof, the said County of Jackson has executed this bond by the presiding justice of the County Court of said County, under the order thereof, signing his name hereto, and by the Clerk of said Court, under the order thereof, attesting the same and affixing the seal of said court. This done at the City of Independence, County of Jackson, this——day of——, A. D. 187—."

These bonds were issued in aid of the same enterprise as those passed on by this Court in Harshman vs. Bates County, 92 U. S. 569, and Bates County vs. Winters, 97 U. S. 83, and 112 U. S. 325, but under different circumstances as to the terms and conditions of the petition upon which the vote was taken and the facts constituting the alleged subscription. The vote was taken upon a proposition to subscribe to the stock of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, and the bonds were issued by the County Court to the Lexington, Lake and Gulf Railroad Company. The bonds contain the same recitals, and are in all material respects similar, upon their face, with those in the Bates County cases; and one of the questions presented is, whether upon the facts in this case, as it was upon the facts in those cases, there was a valid contract of subscription to the stock of the company proposed in the vote before it was extinguished by the consolidation. The other question presented is, whether the bonds are not void, because issued contrary to the terms and conditions of the proposition made by the voters of the Township.

ASSIGNMENT OF ERRORS.

The plaintiff in error assigns the following errors:

First.—The findings of the Court are not sufficient to support a judgment for defendant in error.

Second.—Upon the findings of the Court, the judgment should have been for the plaintiff in error, instead of the defendant in error.

Third. The Court erred in finding, as a conclusion of law, upon the facts found, that the defendant in error was entitled to a judgment.

Fourth.—The judgment is against the law and the facts found.

And for a more particular assignment of errors, the plaintiff in error says:

First.—It does not appear from the special finding of facts by the Circuit Court, that the Township of Van Buren, or the County Court of Jackson County in its behalf, made any contract of subscription to the capital stock of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, or the Lexington, Lake and Gulf Railroad Company, or any other company; nor was there in fact or law any subscription or contract of subscription by said Van Buren Township, or the County Court of Jackson County in its behalf, to the capital stock of any company; and the Court therefore erred in rendering judgment for the defendant in error on the special finding of facts.

Second.—It appears from the special finding of facts by the Circuit Court that neither the Pleasant Hill

Division of the Lexington, Chillicothe and Gulf Railroad, nor the Lexington, Chillicothe and Gulf Railroad Company, nor the Lexington, Lake and Gulf Railroad Company ever located or built, or had any power or authority under their charters to locate or build a railroad in compliance with the terms and conditions of the petition or proposition voted on by the voters of Van Buren Township, in this, that said petition and proposition called for a railroad to commence at the Town of Chillicothe, which is in the second tier of counties north of the Missouri River, and none of the said companies had any power or authority to build a railroad north of the Missouri River. Therefore, the County Court of Jackson County could not, in behalf of Van Buren Township, make any valid subscription to the capital stock of either of said companies; and the Court, for this reason, also erred in rendering judgment for the defendant in error upon the special finding of facts.

BRIEF.

I.

The evidence on the question of a subscription, or contract of subscription, as appears from the finding of the court below was as follows (pp. 44-45-46 of Printed Record):

The order of the County Court declaring the proposition to subscribe to the stock of the Pleasant Hill Company carried, which order was drawn by the attorney for the company, proceeded thus: "It is therefore ordered by this court, in compliance of said election, and at the application of said company, that said subscription, so voted as aforesaid, of said sum of fifty thousand dollars by said township to the capital stock of said railroad company be had and made and entered of record, and the said subscription is now made by this court on behalf of, and for said township of Van Buren, as aforesaid." "There (was) is no evidence before the court that the said railroad company ever had or kept any regular stock-book for the entry or subscription of stock by subscribers after its organization; but the directors, in their testimony before the court, state(ed) that they were all personally in favor of securing the stock subscriptions in Van Buren township." "After the organization of said company different directors, by the common consent and general understanding of all the directors, went into the respective townships to canvass for said subscriptions." "No one of the directors remembers that any subscription of the stock of Van Buren township was actually made in the stock-books of the Pleasant Hill Company or in those of the consolidated company by the County Court, nor do they remember that either of said companies had or kept any stock-books at all, *and they do not remember that any action was ever taken by the board of directors as a board, accepting such subscription;* but all the members of the board were individually in favor of the subscription, and had favored the vote in Van Buren and other townships named. Whatever books or other memoranda were kept by the Pleasant Hill Company were turned over to the consolidated company after the consolidation. *No stock was ever issued by said Pleasant Hill Company, or by the consolidated company, or by any company, on account of said subscription and bonds.*" "The Pleasant Hill Division Company, in framing its articles of consolidation, which were approved and adopted by the stockholders and the board of directors thereof, previous to the act of consolidation, referred to this as a subscription to its capital stock, and undertook by its articles to convey it as an asset to the new or consolidated company."

This last paragraph of the findings we respectfully suggest is not precisely true according to the written instruments themselves, which are also a part of the findings preserved by the bill of exception. The only reference to the Van Buren proposition in any action of the Pleasant Hill Company is in the articles of consolidation of the two companies as follows: (Page 50 of Printed Record.) "Seventh, that the stock now subscribed by individuals now residing in the Counties of Jackson, Johnson and Cass, to said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, as well as the subscriptions now *voted* by the townships of Pleasant Hill, Polk and Austin in said County of Cass and the township of Van Buren in the County of Jackson, all in the State of Missouri, shall be expended by said new and consolidated company in the construction of the road-bed and other necessary expenses appertaining thereto, including engineering expenses and any other proper expenses, exclusively upon the line and road of said consolidated company through and in the Counties of Johnson, Jackson and Cass as hereinbefore designated and then only upon the terms, conditions and limitations upon which said subscriptions were voted to the capital stock of said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, as set forth in the petitions of the tax payers of the said several townships last named to the County Courts of said respective Counties asking for said vote and subscriptions." There is also the further general provision in article fifth of the consolidation (p. 49 of Printed Record) that the said new and consolidated company is "to have and possess full and complete authority, power and right in law or equity to demand, sue for, recover, receive, and receipt for all and every such sums as may have been and are now or may be subscribed to, voted or pledged to the capital stock of said two several companies, or either of them, by individuals, Counties, townships, towns and otherwise, etc." No road was ever built or operated by any of the companies.

The foregoing is the evidence, as appears from the bill of exceptions, upon which the lower court decided that an absolute binding subscription was made to the stock of the Pleasant Hill Company. *In this the court erred.* The cases above referred to, Harshman vs. Bates County, 92 U. S. 569; Bates County vs. Winters, 97 U. S. 83; Bates County vs. Winters, 112 U. S. 325, and Marsh vs. Supervisors, 10 Wall. 676, established it as the law of this court that the bonds sued on in this case are invalid in the hands of any person, unless there was a binding contract of subscription between the township of Van Buren and the Pleasant Hill Company before its consolidation with the other company.

Upon this evidence and the following authorities, we insist that there was no subscription, or contract of subscription, to the stock of the Pleasant Hill Company:

Bates County vs. Winters, 112 U. S. 325.
Bates County vs. Winters, 97 U. S. 83.
Aspinwall vs. Davies Co., 22 How. 364.
Buffalo & Jamestown R. R. Co. vs. Falconer, 103 U. S. 821.
State *ex rel.* Wilson vs. Garroute, 67 Mo. 453.
Weil vs. Greene County, 69 Mo. 284–5.
Carlisle vs. Saginaw R. R. Co., 27 Mich. 315.
Sewall vs. Eastern R. R. Co., 9 Cush. 12.
Gray vs. Portland Bank, 3 Mass. 364.

Parker vs. Northern Cent. Mich. R. R. Co.
33 Mich. 23.
Hopper vs. Covington, 10 Biss. 488.
Hannibal vs. Fauntleroy, 105 U. S. 408.
United States vs. Knox County, 122 U. S. 306.
Cawdrey vs. City of Caneadea, 16 Fed. R. 532.
Gilson vs. Township of Dayton, 123 U. S. 59.
Hopper vs. Covington, 118 U. S. 148.
Wilson vs. Salamanca, 99 U. S. 504.
County of Scotland vs. Thomas, 94 U. S. 691.
Marsh vs. Supvrs. of Fulton Co., 10 Wall. 676.
Dixon County vs. Field, 111 U. S. 83.
County of Davies vs. Dickinson, 117 U. S. 657.

The late Chief Justice Waite, in delivering the opinion of the court, in Bates County vs. Winters, 112 U. S. 325, said: "The rule may be stated thus: An actual manual subscription on the books of a railroad company is not indispensably necessary to bind a municipality as a subscriber to the capital stock. If the body or agency having authority to make such a subscription passes an ordinance or resolution to the effect that it does thereby, in the name and on behalf of the municipality, subscribe a specific amount of stock, and presents a copy of that ordinance or resolution to the company for acceptance as a subscription, and the company does, in fact, accept, and notifies the municipality or its proper agent to that effect, the contract of subscription is complete, and binds the parties according to its terms." The case is decided upon the theory that the ordinance or resolution of the County Court that a subscription is made is, by itself, not enough, but an acceptance by the company and notice of such acceptance to the municipality or agent are also requisite. There was held to have been a notice of the acceptance to the County because the acceptance had been made in the presence of the County's agents. The steps required to make a contract are in all respects the same as in the ordinary case of a contract entered into by the making an acceptance of a proposition. The proposition alone is not enough; the proposition and a resolution of a person or corporation to accept are not enough. There must also be a notice of acceptance given to the proposer. Bates County vs. Winters in the 97 U. S., is also to the effect that an actual contract mutually binding on both the parties is necessary. Both the municipality and the company must be bound. In that case the court, through Justice Hunt, delivering the opinion, said: "No acceptance was made by the railroad company; no notice of acceptance was given, nor was there any act or fact which afforded a pretext for saying that the railroad company was bound by the contract of subscription." This language was quoted with approval by the court when the case was again before them in the 112 U. S. Mr. Justice Hunt further said, in commenting upon the case of Nugent vs. Supervisors, 19 Wall, 241: "It is decided in that case that an actual manual subscription on the books of the company is not indispensable; that where an order was made by a County Court which said that it subscribed for a specified number of shares of railroad stock, which was accepted by the railroad company, and notice of such acceptance given to the County Court, where the minds of the parties met, and both understood that a contract had been made, and where the County Court had accepted the position of a stockholder; received certificates for the stock subscribed, and voted as a stockholder, that these facts constituted a subscription."

The case of Justices of Clark County vs. Paris R. R. Co., 11 B. Mon. 143, which seems in one part of it to sanction the doctrine that a mere resolution by the municipal authorities that a subscription is made is sufficient, is really based upon a resolution solicited and accepted by the company, as will be seen from reading the entire opinion.

In the case of Moultree County vs. Savings Bank, 2 Otto 631, Justice Strong contended for the position that the order, or resolution of the municipal authorities was itself a subscription, but was not willing that the decision should rest upon that ground, saying "that if this conclusion could not be reached, it would make but little difference to the present case, for it could not be doubted that the action of the board was at least an undertaking to subscribe, and this was assented to, or accepted by the railroad company. The resolutions were entered of record by the clerk and president of the railroad company, and the company made an appropriation of the bonds to be received in payment for the subscription by a contract made on the 15th of April, 1870." It seems to have always been the understanding of this court that the decision in the Moultree County case was based upon an *accepted* subscription.

Buffalo & Jamestown R. R. Co. vs. Falconer, 13 Otto 821.

The court, in Aspinwall vs. Davies County, 22 How. 364, decides that the required vote of the people of the municipality is not a sufficient contract. If not, is the order, or resolution of the authorities declaring the vote carried and the subscription made any more?

Is there a meeting of the minds in the one case any more than in the other? Is there anything more to bind the railroad company in the one case than in the other? In that case, the court held "that a subscription was necessary to create a contract binding upon the County on the one side to take the stock and pay in bonds; and upon the other, to transfer the stock and receive the bonds for the same. Until such a subscription is made, the contract is unexecuted, and obligatory on neither party." The State authorities are to the same effect. In State *ex rel.* Wilson vs. Garroute, 67 Mo. 453, the Supreme Court of Missouri, in passing on this question, observe: "Until the occurrence of a subscription and its acceptance, as well as a corresponding delivery or intended delivery of stock, there would exist neither a contract nor a consideration for one." Almost the same language is used and the same principle is again announced by the court, in Weil vs. Greene County, 69 Mo. 284-5.

The Supreme Court of Michigan in Carlisle vs. Saginaw R. R. Co., 27 Mich. 315, express the rule thus: "A stock subscription is a transaction between the subscriber and the company, and the obligation of one can only be sustained by the corresponding obligation of the other. If both are not bound neither is bound, and the transaction is a nullity." In this case the president had solicited the subscription, but there was no formal act of acceptance by the company.

To the same effect is Parker vs. Northern Central Michigan R.R. Co., 33 Mich. 23. Say the Supreme Court of Massachusetts in Sewill vs. Easton R. R. Co., 9 Cush. 12: "The mere subscription of an offer or request to become a proprietor or stockholder, not accepted or assented to by the company, does not make one a stockholder." Gray vs. Portland Bank, 3 Mass. 364, decides the same point.

The evidence in this case shows no such contract mutually binding upon the township and the Pleasant Hill Company as is required by the above authorities. A proposition on the part of the township to subscribe is all the evidence shows. There is no evidence of an acceptance of the proposition by the Pleasant Hill Company, or any notice of acceptance given to the proposers. The Pleasant Hill Company was never bound to deliver its stock in exchange for the bonds proposed, and the township was therefore not bound to make the subscription or deliver the bonds. Not only was there no subscription on the books of the company, but no one of the directors remembered "that any action was ever taken by the board of directors as a board accepting such subscription." "Whatever books or other memoranda were kept by the Pleasant Hill Company were turned over to the consolidated company after its consolidation." If there had been any acceptance the consolidated company would have the record or memoranda evidence of it. The bonds showing on their face that they were issued to a different company than the one to which a subscription was proposed, and containing no recitals of compliance with the prerequisites of their validity, the burden was upon the plaintiff to show that there was a valid contract of subscription with the Pleasant Hill Company, and that the bonds were issued in compliance with the terms and conditions of the authority conferred.

Hopper vs. Covington, 10 Biss. 488.
Hannibal vs. Fauntleroy, 105 U. S. 408.
United States vs. Knox County, 122 U. S. 306.

Gilson vs. Town of Dayton, 123 U. S. 59.
Cawdrey vs. City of Caneadea, 16 Fed. R. 532.
Hopper vs. Covington, 118 U. S. 148.

That such a valid contract should affirmatively appear is also shown by the action of this court in the case of Bates County vs. Winters, above cited. The case was reversed the first time because the contract was not shown, but was remanded for a new trial to give the plaintiff an opportunity to supply the proof if he could; on a second trial it was held that a contract of subscription was made out, and the plaintiff prevailed. Not only is sufficient affirmative evidence of the contract wanting in the present suit, but the evidence embraced in the special findings shows the contrary as conclusively as such a negative can be established. There was no subscription on the books, no record or memorandum of any acceptance of the proposition voted, no remembrance by any of the directors of the company of any such acceptance, no stock ever issued, and no action as a stockholder ever taken by the County or township. The resolution of the County Court declaring the vote carried, and that a subscription was thereby made upon the application of the company, is certainly no proof of an actual contract or subscription. Can A by a declaration or resolution that he makes a contract with B thereby make the contract with B without the latter's agreement or consent thereto? Or is it any different if A declares that he makes it upon the application of B? Is B bound? Or is either bound? Can the declaration of an agent have any greater effect?

The court decides, in Bates County vs. Winters, 97 U. S. 91, that a recital in the order of a County Court that a subscription has been made can furnish "no satisfactory evidence of an actual or legal subscription." The County Court was the special agent of the township with which it had no official connection, and the township was not bound unless the County Court acted within the powers delegated to it by the Act of the Legislature and the petition or proposition voted on by the township.

> Wilson vs. Salamanca, 99 U. S. 504.
> County of Scotland vs. Thomas, 94 U. S. 691.
> Lawson vs. Schnellen, 33 Wis. 293.

Being thus a special agent is an additional reason why it could not make a contract between the township and the railroad company by a recital only. The County Court had only power to determine whether the proposition had carried at the election, and if it had carried, to make the subscription in behalf of the township; in exercising this latter power it was to act ministerially, and as a mere agent. It had no power or aurthority to determine judicially that a subscription had been made when it had not, or that an application for a subscription had been made when it had not. Whether it did make a contract of subscription is a question which it has become the province of this Court to decide. If there was no valid contract of subscription with the Pleasant Hill Company, then the bonds were issued to a company to which there had been no proposition voted by the township. It was just as though the County Court had issued the bonds without any application or vote or any action on the part of the township whatever. There was no agency in the County Court at all. It required the application and the vote to constitute the County Court the agent of the township. Could a recital by the County Court in its order that there had been an application and vote—in effect, that it was the constituted agent of the township—create such an agency? The agency must first be constituted; there must first be an agent before the recital or statement of the agent can bind anybody. (The distinction is to be kept in mind between the recital of an application, vote, etc., where the County Court acts as the special agent of a township and where it acts as and for the County.) In the present case, the fact of a contract of subscription must stand in place of the fact of agency, because if there was no such contract, there was no authority in the County Court at all to issue the bonds to the consolidated company.

The question is one of the authority of the township to issue its bonds to the consolidated company. If there was no contract of subscription with the Pleasant Hill Company then, as was held in Marsh vs. Supervisors of Fulton County, 10 Wall. 676, the authority to issue bonds to the consolidated company never existed; the power to make the contract was wanting. As has been said before a contract with the Pleasant Hill Company must stand in the place of an application and vote to the consolidated company; and especially is such an application and vote the essence of the power to make the contract in Missouri, because Sec. 14 of Art. 11 of the Constitution of Missouri of 1865 expressly prohibited the legislature from authorizing any county, city or town, to become a stockholder in or loan its credit to any corporation unless two-thirds of the qualified voters should assent. This provision was held in Bates County vs. Winters, 92 U. S. 569, to apply to townships also.

Of a constitutional provision like this in Dixon County vs. Field, 111 U. S. 83, the court said: "This denies to municipal bodies all power to make any donations to railroads or other works of internal improvement, except by virtue of legislative authority and an election held to vote on the particular proposition in pursuance thereof." The contract with the Pleasant Hill Company being thus the essence of the power to subscribe to, and issue the bonds to the consolidated company, the recital by the County Court in its order that there was such a contract, can not give the power or create such a contract or afford any evidence of it: County of Davies vs. Dickinson, 117 U. S. 657; Dixon County vs Field, 111 U. S. 83.

We therefore respectfully submit that the recital in the order of the County Court that a subscription was thereby made upon the application of the company is no evidence whatever as to the fact. If it could be considered as such evidence, it is contradicted by the County Court itself in its order providing for the issuing of the bonds. That order recited that the subscription had been made to the Lexington, Lake and Gulf (the consolidated) company (see page 52 of the Printed Record). The purchasers of these bonds being chargeable with notice of any want of authority to issue them to the consolidated company, stand in no better position than the company itself. The recital in question could not bestow any rights or impose any obligations on the company, and it cannot aid the plaintiff in this action any more than it could the consolidated company in an action to enforce the issuance of the bonds.

II.

The law relied upon as the authority for the issue of the bonds provides that "whenever twenty-five persons, taxpayers and residents, in any municipal township, for election purposes, in any County in this State, shall petition the County Court of such County, setting forth their desire, as a township, to subscribe to the capital stock of any railroad company in this State, building or proposing to build a railroad into, through or near such township, *and stating the amount of such subscription, and the terms and conditions on which they desire such subscription shall be made*, it shall be the duty of the County Court, as soon as may be thereafter to order an election to be held in such township to determine if such subscription shall be made; which election shall be conducted and returns made in accordance with the law controlling general and special elections, and if it shall appear from the returns of such election that not less than two-thirds of the qualified voters of such township voting at such election are in favor of such subscription, it shall be the duty of the County Court to make such subscription in behalf of such township, *according to the terms and conditions thereof*, and if such conditions provide for the issue of bonds in payment of such subscription, the County Court shall issue such bonds in the name of the County with coupons for interest attached; but the rate of interest shall not exceed ten per cent.; and the same shall be delivered to the railroad company."

The special finding (see page 55 of Printed Record) does not purport to give this section in full. The above is the full section, and is to be found in Session Acts of Missouri of 1868, at page 92. The petition to the County Court was as follows (see page 43 of Printed Record):

"Now at this day came John W. Tate and fifty-seven others, by their written petition, and ask the court to order an election of the qualified voters of Van Buren township to test the sense of the people in regard to said townships subscribing the sum of fifty thousand dollars to the capital stock of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company *upon the following terms and conditions, to-wit: First. The said railroad commencing at Chillicothe;* thence via the City of Lexington, in La Fayette County, State of Missouri; thence to or near the town of Hopewell, in said County of La Fayette and State aforesaid; thence in a southwesterly direction through said Van Buren township, Jackson County, Missouri, to the town of Pleasant Hill, Cass County, Missouri, and shall run through or within one-half mile of the limits of Easly's first addition to the town of Lone Jack, in said Van Buren township, Jackson County, Missouri; also, that a depot shall be established at said road within one-half mile of the limits of said addition."

Number eighteen of the special findings (see page 55 of Printed Record) is as follows: "It appears from the evidence that the town of Chillicothe is situated in Livingston County, Missouri, it being in the second tier of counties north of the Missouri River, and none of the three companies hereinbefore mentioned had any power or authority under their charters to build a railroad north of the Missouri River."

This finding is verified by the charters themselves of the several companies, as found in the Printed Record (see pages 27–29–32). The Lexington, Chillicothe and Gulf Company and the Lexington, Lake and Gulf Company, were to commence at Lexington, in La Fayette County, which is on the south bank of the Missouri River, and run southwardly, while the Pleasant Hill Company was to commence still further south, to-wit: On the south boundary line of La Fayette County (a County south of the river), and run southwardly. No road was ever built north of the river, and none was ever built in Van Buren township (Printed Record P. 53).

Upon this point we contend, that inasmuch as the law giving the power to the township required the petition or application to the County Court to state the conditions of the proposed subscription, and required the County Court in acting in behalf of the township to observe such conditions; inasmuch as the petition or application presented to the County Court and voted on by the township made it a primary condition that the road should commence at Chillicothe north of the Missouri River; and inasmuch as neither of the three companies ever located or built or ever had authority under their charters to locate or build a road north of the river or commencing at Chillicothe; the bonds were issued without the authority of the township and are for that reason void.

It is obvious that none of these companies could build north of the river without authority from the legislature: State vs. Saline County Court, 51 Mo. 372. It has already been decided by this court in Bates County vs. Winters, 97 U. S. 83, and Harshman vs. Bates County, 93 U. S. 569, that the recitals in these bonds are such that there can be no *bona fide* holders of them. It is said in McClure vs Oxford, 94 U. S. 429, that "every man is chargeable with notice of that which the law requires him to know, and of that which, after being put upon inquiry, he might have ascertained by the exercise of reasonable diligence. Every dealer in municipal bonds, which upon their face refer to the statute under which they are issued, is bound to take notice of the statute and of all its requirements." In that case, the bonds referring to the statute, it was held that the purchaser was bound to know that the act did not go into effect until after its publication in the *Kansas Weekly Commonwealth;* that he was then put upon inquiry as to the time of this required publication, and could have ascertained that it did not take place until March 21st; that he was also chargeable with notice of the requirement of the act that the question of the issue of the bonds had to be submitted to the legal voters of the town at an election of which thirty days' notice was required; and that, as the bonds stated that the election had taken place on the 8th day of April, the purchaser was bound to know that there had not been sufficient time between March 21st and April 8th to give the required notice. In the present case, as the bonds referred to the act under which they were issued, and contained no recitals of a compliance with it, the purchaser was bound to take notice that by the terms of the act the petition or proposition of the voters might be upon conditions, and that the County Court was required to observe those conditions. Being thus put upon inquiry, he could have ascertained that the proposition of the voters contained the condition that the railroad should commence at Chillicothe, and that none of the companies could under their charters comply with this condition.

McClure vs. Oxford is a stronger case for the purchaser than the one now before the Court. In the former, the purchaser had to search the files of the newspaper to find out when the law was published, while in the latter everything was shown by the records of the County Court and the charters of the railroad companies. The question of *bona fide* holding may therefore be laid aside, and the case treated as though the railroad company itself was suing upon the bonds or attempting to enforce their issuance. As was said in Hopper vs. Town of Covington, above cited, such bonds possess none of the qualities of negotiable paper.

We rely upon the following cases to show that the bonds in question were made and delivered without authority because of the failure and inability of the company to comply with the condition of the proposition voted on by the taxpayers:

Concord vs. Portsmouth Savings Bank, 92 U. S. 625.
Buffalo & Jamestown R. R. Co. vs. Falconer, 93 U. S. 821.
Railroad Company vs. City of Aurora, 99 Ill. 205.
Thomas vs. Lansing, 14 Fed. R. 618.
Mellen vs. Lansing, 11 Fed. R. 829; 20 Blatch. 278.
Virginia, &c., R. R. Co. vs. Lyons County, 6 Nev. 68.
State *ex rel.* vs. Davies County, 64 Mo. 30.
Wagner vs. Meety, 69 Mo. 150.
State vs. City of Minneapolis, 32 Minn. 501.
Railroad Company vs. Thompson, 24 Kan. 170.

Lawson vs. Schnellen, 33 Wis. 288.
Railroad Company vs. Hartford, 58 Me. 23.
City of Aurora vs. West, 22 Ind. 89.
Foote vs. Mount Pleasant, 1 McCrary 101.
Cawdrey vs. City of Caneadea, 16 Fed. R. 532.

Concord vs. Portsmouth Savings Bank, 92 U. S. 625, was a case in which the town of Portsmouth had voted to subscribe to the stock of a railroad company upon the condition, which was also contained in the statute, that the company should build its road through the town, and the company had given notice of its acceptance of the proposition. The question was whether this constituted a contract which could not be impaired by a subsequent constitutional prohibition. The court said: "The town voted on the 30th day of November, 1869, that it would make a donation, provided the company would run its railroad through the town. On the 20th of June, 1870, the company gave notice of its acceptance of the donation. But the town was not empowered to make the donation, until the road was located and constructed through the town. It had no authority to make a contract to give, and the acceptance was an undertaking to do nothing which the company was not bound to do before the authority of the town to make the donation come into existence. * * * * We conclude then that at the time the donation was made there was no authority in the municipality to make a donation to the railroad company, and consequently no authority to issue the bonds. It follows that the bonds and coupons are void." The same decision is made in Buffalo & Jamestown Railroad vs. Falconer, 93 U. S.

821. In that case the law authorized a subscription and issue of bonds upon a vote of the taxpayers, and provided that the petition of the taxpayers to the County Judge might be absolute or conditional. The petition of the taxpayers contained the condition that the railroad should be located and constructed through the village of Jamestown before the bonds should be delivered; under the law the County Judge, if he decided that the petition was signed by a majority of the taxpayers, was to appoint commissioners to issue the bonds, and make the subscription on behalf of the town. The commissioners thus appointed agreed with the company that they would subscribe the stock and issue the bonds when the road was completed through Jamestown. Before the road was built through Jamestown a new State Constitution went into operation which prohibited all such municipal subscriptions. It was held that the commissioners had no power to make the contract, and could not make the subscription or issue the bonds until the condition of the taxpayers' petition was complied with, and as the Constitutional prohibition had gone into operation in the meantime no bonds could be issued. In Railroad Company vs. City of Aurora, 99 Ill. 205, where the city had voted the bonds sued on upon a condition which the railroad company could not perform, it was decided that the company could not recover upon the bonds. In Thomas vs. Town of Lansing, 14 Fed. R. 618 and Mellen vs. Town of Lansing, 11 Fed. R. 829, it is held that, under legislative authority to any city in any County through or near which a certain railroad may be located, to aid in the construction of such railroad, the entire route and termini must be fixed according to law before the bonds can be issued; and

that bonds issued before such location are void in the hands of all persons who may hold them. In the latter case the court said: "The location of the first branch authorized by the act was a condition precedent to the right of the town of Lansing to issue the bonds in question, and is a condition to be enforced even when the bonds are in the hands of a *bona fide* holder. The absence of such a location is as fatal as if there were no act." Upon a new trial of the same case, in 20 Blatchford 278, it was again decided adversely to the bondholder upon the sole ground that there was not a sufficient location of the road to give the County Commissioners power to issue the bonds; and that although a part of the road was located and built, and this through the County of Tompkins and town of Lansing, yet as the termini were not such as were prescribed by the act, even a *bona fide* holder of the bonds could not recover. The court said: "It is not enough that a location be made through a particular County, so that even though the maps filed could be regarded as a location of so much of the western extension as was to pass through Tompkins County, there would be no authority for issuing the bonds until the whole extension or branch should be located."

The case of Virginia, &c., R. R. Co., vs. Lyons County, 6 Nev. 68, was a proceeding by mandamus to compel the issuing of bonds subscribed upon the condition in the statute that the railroad should pass within 1,200 feet of a certain point. The road was built so as to pass within 2,400 feet, and a branch 400 feet of the point. This was claimed to be a substantial compliance, and evidence was offered to prove that it was impracticable to build the road any nearer to the point mentioned in the condition. The court, in deciding the case, said: "This is not a substantial compliance with a contract to perform a different matter, and the fact that to have built a road as directed would ruin it, simply proves that the plaintiff agreed to do something which it could not do, or deemed it better not to do; but it was bound to do that thing substantially before it could claim any performance from the defendants." That the road as built might be of more benefit to the inhabitants of the County than if constructed as required, was held to be immaterial.

In State *ex rel.* vs. Davies County, 64 Mo. 30, where a township, acting under the law under which the bonds in question were issued, had voted for a subscription to the capital stock of a railroad company upon condition that it would construct its road, and build its depot within one mile of the town of Pattonburg, it was held that the company could not, by mandamus, compel the County Court to issue the bonds when it had not complied with the condition, although the company had changed its route at the request of the citizens of the town.

The court, in Wagner vs. Meety, 69 Mo. 150, enjoined the issuance of the bonds because the route of the railroad had been so changed that the condition of the subscription could not be complied with.

In State vs. City of Minneapolis, 32 Minn. 501, the City had voted to issue its bonds to a railroad company, provided that its eastern terminus, general offices and headquarters should be in Minneapolis. The court held that the company could not compel the City to issue the bonds because it had not performed the condition. A like decision was made by the Supreme Court of Kansas in Railroad Company vs. Thompson, 24 Kansas 170, where the company had not fulfilled the condition upon which the bonds were voted; and the issuing of the bonds was enjoined in Lawson vs. Schnellen, 33 Wis. 288, for a like reason. Railroad Company vs. Hartford, 58 Maine 23, is also to the same effect. The case of the City vs. West, 22 Ind. 89, was a suit on municipal bonds issued under legislative authority to the City to issue bonds in aid of any railroad running to the City. It was held that bonds issued to a company which did not run its road into the City were void in the hands of any person.

From the above authorities the following rules may be deduced. When the bonds are issued in disregard of a condition contained in the statute itself, they are void in the hands of all persons, notwithstanding any recitals they may contain. When the condition is in the proposition of the voters, the bonds cannot be lawfully issued, nor can the company compel their issuance or recover upon them when issued, unless the condition has been fulfilled. It may be that, in the latter case, a *bona fide* holder could recover on them if they were issued by a County or a City through its own officers, and contained recitals of a compliance with the conditions. But the bonds in this suit contain no such recitals, and put all purchasers on inquiry as to authority upon which they were issued. The present holders of them are in no better position that the railroad company would be when suing upon the bonds or attempting to compel their issuance by a writ of mandamus.

There is an additional reason for holding upon this point that the bonds are void, and that there can be no *bona fide* holding of them. As was said upon the first point, the County Court was the special agent of the township, and could act only upon the terms and conditions of the authority given them by the voters of the township, the case being distinguishable from those in which a regularly constituted County or municipality is acting through its own officers. Wilson vs. Salamanca, 99 U. S. 504; County of Scotland vs. Thomas, 94 U. S. 691; Lawson vs. Schnellen, 33 Wis. 293. In the latter case, the court observed: "The nature of the agency, whether general or special, becomes most important in determining the question whether any defense could be successfully made against payment of the bonds in the hands of a *bona fide* holder for value on the ground that the officers, when they made and delivered the same, had transcended or failed in the performance of their duties toward the town or had departed from the instructions lawfully given or the terms and conditions lawfully imposed by the voters and in accordance with which such making and delivering only had been authorized. If the agency is general, and if there is no public record of the proceedings of the voters or the officers by which to affect purchasers of the bonds with notice of the violation of duty or departure from the terms and conditions of their authority by the officers, then it would follow that no defense could be interposed by the town so as to prevent a recovery upon the bonds in a suit brought by a *bona fide* holder for value. * * * * If on the contrary the agency is special, then a compliance with all the substantial conditions upon which the power is granted will be required in order to give validity to the bonds in the possession of any person, whether he be an innocent holder or not."

III.

If our position is correct upon either of the foregoing points, the bonds are void for want of authority to issue them, and the levy and collection of taxes and payment of interest on them for a time by the County Court cannot make them valid.

Katzenberger vs. Aberdeen, 121 U. S. 172.
Cawdrey vs. City of Caneadea, 16 Fed. R. 532.
Leslie vs. Town of Urbana, 8 Biss. 435 (affirmed in Supreme Court).
Thomas vs. Town of Lansing, 14 Fed. R. 618.
Lewis vs. Shreveport, 108 U. S. 282.
Marsh vs. Fulton County, 10 Wall. 676.
State vs. Davies County, 64 Mo. 30.

The case is different from those in which it has been held that the acceptance and retention of the stock by the municipal corporation, participation in the corporate meetings of the company and payment of interest on the bonds will cure mere irregularities in the issue of the bonds when they are in the hands of a *bona fide* holder. Our first point goes to the authority of the township to issue the bonds.

As has been before remarked, Section 14 of Article 11 of the Constitution of Missouri of 1865 expressly prohibited any donation or subscription or issue of bonds without the preliminary vote. The provision makes a vote of the people a condition of all legislative authority to issue the bonds. If there was no valid contract of subscription with the Pleasant Hill Company, then the bonds were issued to the consolidated company without any vote or application or any proceeding or action whatever on the part of the township, and without even the semblance of authority. Such a contract must stand in the place of the application and vote. The bonds are not only void for want of authority, but are also made void by the Constitutional prohibition itself. Under the Constitution there could be no legislative authority without the vote.

In Katzenberger vs. Aberdeen, 121 U. S. 172, the bonds were held void because the levy of a tax to pay the same had not been approved by a vote of the legal voters of the City. All the interest coupons, except those included in the suit, had been paid by the City, being seven installments of interest in all. It was held that this could not ratify or give validity to the bonds.

The case of Cawdrey vs. City of Caneadea, 16 Fed. R. 532, was a case in which the bonds were held to be vitiated by the absence of the required vote of the people, and the levy and collection of taxes and payment of interest was held not to be a cure. All the cases hold that payment of interest cannot make good a lack of authority in the township. In this case, not only was the vote necessary to the authority, but the Legislature itself could not give the authority without the vote. It is like the case of Thomas vs. Town of Lansing, 14 Fed. R. 618, where the bonds were held to be void for failure to comply with a condition in the act giving the power.

Our second objection also renders the bonds void because there never was any authority in the special agent to issue them to a company whose road did not commence at Chillicothe.

The fact that the defendant in error cannot claim the position of a *bona fide* holder is important to be considered upon this question. Knowing or being bound to know that the bonds were void, the fact that some interest had been paid on them cannot protect him or make the bonds valid in his hands. No action of the County Court in levying and collecting taxes and paying interest could in any manner affect the validity of the bonds (Marsh vs. Fulton County, 10 Wall. 676) and the payment of the tax by those of the citizens who paid it was wholly involuntary. Nor is there anything in the record to show that the defendant in error was induced to purchase these bonds by the fact that some interest had been paid on them. On the contrary, it is a fair inference from the facts in the record that one installment of interest coupons had been dishonored before he purchased. The earliest maturing coupons embraced in either of the suits matured July, 1876. (See petition, pages 5 and 18 of Printed Record.) According to the finding (see finding No. 12, page 54 of Printed Record) interest was paid by the County Court only up to and including the year 1875. The coupons maturing January, 1876, are not accounted for, and must have been dishonored before the defendant in error purchased. It cannot be urged in this case, as in most, if not all the cases where payment of interest, together with other facts, has been held to cure irregularities, that the township has received and accepted the benefit of the stock or the enterprise, as no road was ever built through the township, no stock was ever issued, and neither the township or the County Court ever assumed the position of a stockholder.

It is decided in the case of State vs. Davies County, 64 Mo. 30, that the power of the voters of the township under the law in question "is purely statutory, and exhausts itself when such voters give expression at the polls of their assent to, or dissent from the proposed subscription," and that "any subsequent action on their part being unknown to the law is possessed of no legal validity," and can bestow no rights upon one in the position of the defendant in error in this case. If any subsequent informal action on the part of the people of the township could amount to a ratification, it cannot be perceived how the involuntary payment of the tax by some of the taxpayers can take the place of a vote of "two-thirds of the qualified voters of the township."

We ask that the bonds be declared void, and that the judgment of the Circuit Court be reversed.

C. O. TICHENOR AND
Edward P. GATES & ~~WALLACE~~.
Attorneys for the Plaintiff in Error.

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 102.

THE COUNTY OF JACKSON, MISSOURI, PLAINTIFF IN ERROR,

vs.

THE NINTH NATIONAL BANK OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

STATEMENT AND BRIEF

OF

DEFENDANT IN ERROR.

By J. B. HENDERSON,
Attorney.

JUDD & DETWEILER, PRINTERS.

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 102.

THE COUNTY OF JACKSON, PLAINTIFF IN ERROR,

vs.

THE NINTH NATIONAL BANK OF NEW YORK.

STATEMENT OF CASE.

On August 13, 1869, articles of association to incorporate the Lexington, Chillicothe and Gulf Railroad Company were filed in the office of the secretary of state for Missouri. The object, as disclosed by these articles, was to build and operate a railroad beginning at Lexington, in La Fayette county, Mo., running thence southwardly on a line east of the head waters of the Little Sni creek, by way of Mt. Hope, in said county, to Holden, in Johnson county; thence through East Sugar Creek township, in Cass county; thence southwardly in the direction of Butler, in Bates county, and thence southwardly to such point in Bates county as may be found most advantageous to connect said railroad with Ft. Scott, Kansas. The road, as stated in the articles, was to be about seventy-five miles in length, and it is correctly delineated and described by the more direct line on the small lithographed map accompanying this statement.

On July 18, 1870, like articles were filed in the secretary's office to incorporate the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company. It is provided in these articles that the road shall commence on the south boundary of La Fayette county, in Missouri, in the vicinity of Chapel Hill, in said county; running thence southwestwardly along the best route within a quarter of a mile of the Lone Jack tree, in the vicinity of Lone Jack, in Jackson county, to the city of Pleasant Hill, in Cass county; thence southwardly along the best and most advantageous route by way of the town of Austin, in Cass county, to such point at or near the south boundary of Cass county "as may be found most advantageous to intersect and *consolidate* with said Lexington, Chillicothe and Gulf Railroad Company." The length of the road is stated to be about thirty-six miles, and the entire line is represented in the articles to be within the counties of Jackson, Johnson, and Cass, in Missouri.

The second clause of these articles is in the following words:

> "Sec. 2. The objects of this association shall be the constructing, maintaining, and operating a railroad for public use in the conveyance of persons and property, and eventually to *consolidate with and form a link in and be a part of the main line of the said Lexington, Chillicothe and Gulf Railroad Company.*"

The sole object of the latter organization, as disclosed by the facts in the case, was to deflect or change the line of the former company (the Lexington, Chillicothe and Gulf) between the southern boundary of La Fayette county and the northern boundary of Bates county. The creation of this Pleasant Hill Division was adopted as a means or scheme of altering the line, *pro tanto*, of the Lexington, Chillicothe and Gulf road. To do so it was necessary, first, to file articles and then to consolidate with the Lexington Company, and this purpose was therefore expressly and frankly stated in the articles themselves. It is "to consolidate with and form a link in and be a part of the main line of the said Lexington, Chillicothe and Gulf Railroad Company."

When these companies were thus organized a statute of Missouri, adopted March 23, 1868, was in full force allowing township subscriptions to railroad companies upon a two-thirds vote of their qualified voters, leaving it to the people in their election to fix "the terms and conditions on which they desire it (the subscription) made." The first section of said act is as follows:

> "Whenever twenty-five persons, tax-payers and residents in any municipal township for election purposes in any county in this State, shall petition the county court of such county, setting forth their desire as a township to subscribe to the capital stock of any railroad company in this State, building or proposing to build a railroad into, through, or near such township, and stating the amount of such subscription, and the terms and conditions on which they desire it made, it shall be the duty of the county court, as soon as may be thereafter, to order an election to be held in such township to determine if such subscription shall be made; which election shall be conducted, etc., etc.; and if it shall appear from the returns of such election that not less than two-thirds of the qualified voters of such township, voting at such election, are in favor of such subscription, it shall be the duty of the county court to make such subscription in behalf of such township, according to the terms and conditions thereof, and if such conditions provide for the issue of bonds in payment of such subscription, the county court shall issue such bonds in the name of the county, with coupons for interest attached; but the rate of interest shall not exceed ten per cent. per annum; and the same shall be delivered to the railroad company."
>
> Wagner's Missouri Statutes, p. 313, § 51.

A few days after this Pleasant Hill Company was organized, to wit, on August 2, 1870, fifty-eight of the resident tax-payers of Van Buren township presented their petition to the county court of Jackson county asking an election by the township voters on the proposition to subscribe fifty thousand dollars by said township to the capital stock of this Pleasant Hill Division of the Lexington, Chillicothe and

Gulf Railroad Company. One of these petitioners was John W. Tate, who was then a director of the railroad company. The petition asked that the subscription be paid in bonds of the description afterwards issued.

On receiving and considering said petition the court ordered an election to be held on August 30, 1870, to test the sense of the voters on the proposition.

The election was duly held and returns made thereof, and on the 6th of September, 1870, the county court canvassed the same and made the following order, to wit:

> "In the matter of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company—
>
> "It appearing to the court from the certificate of the clerk of this court this day filed, as well as from the certified returns of the election heretofore ordered by this court, upon the proposition to subscribe the sum of fifty thousand dollars by Van Buren township to the capital stock of the said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company that not less than two-thirds of the qualified voters of said township voting at said election are in favor of said subscription and have voted said sum to the capital stock of said railroad company, at an election held on the 30th day of August, 1870, for that purpose and on that behalf, it is therefore ordered by this court, in compliance with said election and at the application of said company, that said subscription, so voted as aforesaid, of said sum of fifty thousand dollars by said township to the capital stock of said railroad company, be had and made and entered of record, and the said subscription is now made by this court on behalf of and for said township of Van Buren as aforesaid, and said subscription and sum of fifty thousand dollars to be delivered to said railroad company or to such company as said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company may consolidate with, according to the terms and conditions of the petition in the matter of said election and the orders and proceedings relative thereto heretofore made and filed in this court."

In explanation of the wording of this order certain facts disclosed in the testimony may be here stated as they substantially appear in the special finding by the court.

The directors of the company unanimously favored the subscription, and a part of them, by the consent and with the general understanding of them all, went into the township and worked to secure a favorable vote; and after the proposition had been carried, Tilton Davis, as the attorney and authorized agent of the company, prepared the above order in its present form and asked its adoption and entry of record by the court. Some of the directors were examined by defendant, who testified that they could not remember that the company kept stock books, or that this subscription was ever actually entered on any books of the company, and they could not remember whether any formal entry of acceptance of the stock was entered on any book of the company; but they admit that "all the members of the board were in favor of the subscription and had favored the vote in Van Buren and the other townships named." They say, further, that "whatever books or other memoranda were kept by the Pleasant Hill Company were turned over to the consolidated company after consolidation."

Immediately after organization of the Pleasant Hill Company work was begun on both lines, but in such manner as to make the main route correspond, where necessary, with the line of the Pleasant Hill road.

The law in force in Missouri at this time giving railroad companies authority to consolidate was as follows:

> "Any two or more railroad companies in this State existing under either general or special laws, and owning railroads constructed wholly or in part, which when completed and connected will form in the whole or in the main one continuous line of railroad, are hereby authorized to consolidate in the whole or in the main and form one company owning and controlling such continuous line of road, with all the powers, rights, privileges, and immunities, and subject to all the obligations and liabilities to the State or otherwise, which belonged to or rested upon either of the companies making such consolidation. In order to accomplish such consolidation, the companies interested may enter into

contract, *fixing the terms and conditions thereof*, which shall be approved and ratified by a majority of all the stock held in each company or road proposing to consolidate, at a meeting of the stockholders regularly called for the purpose or by the approval in writing of the persons or parties holding and representing a majority of such stock."

Wagner's Missouri Statutes, p. 314, § 56.

It is further provided that the resolutions or articles must be approved and signed by the presidents and secretaries of each company under their seals, after adoption by the stockholders, and then filed with the secretary of state. The consolidation then becomes consummated and complete. Any person interested or aggrieved by an attempted consolidation has the right to bring action to enjoin the proceedings.

In compliance with this statute the stockholders, respectively, of these two companies met prior to September 26, 1870, and approved, ratified, and accepted the provisions of said act, and at said meetings the stockholders approved and adopted resolutions of consolidation which had been previously prepared and adopted by the board of directors of said companies.

These resolutions, constituting the articles of consolidation, were then, in the manner required by law, signed by the officials of the Lexington, Chillicothe and Gulf Company on September 26, 1870, and by those of the Pleasant, Hill Company on the next day. On the 4th of October, 1870, they were filed with, and recorded by, the secretary of state as required to complete the consolidation.

In these articles of consolidation, thus solemnly approved and adopted by each company separately and by both the directors and stockholders of each company, it is recited and declared—

1st. That both companies had commenced the construction of their respective roads and had built parts thereof.

2d. That the Lexington, Chillicothe and Gulf road had constructed in La Fayette county, but found it "impossible and impracticable to commence or complete that part of its road * * * lying and being in the limits of Johnson county and in East Sugar Creek township, in Cass county," and that the line of the Pleasant Hill Company will connect the other road from La Fayette to Bates counties, and that the two being consolidated will in the main and the whole make one continuous and connected line of road from Lexington to the southern end of the L., C. & G. road.

3d. That the two companies shall be consolidated into one, known as the Lexington, Lake and Gulf Railroad Company, the line to begin at Lexington and follow the route of the L., C. & G. to the south boundary of La Fayette county, and thence to take the route of the Pleasant Hill line to such a point in Bates county as may enable the consolidated company to avail itself of subscriptions to the L., C. & G. voted by Grand River and Mt. Pleasant townships, in Bates county, and which might be found most convenient to connect with roads leading into Kansas, Arkansas and Texas.

4th. That the new company shall have all the powers, rights, privileges, and immunities and be subject to all the liabilities of each; that it should have full authority "to demand, sue for, recover, receive, and receipt for all sums" then, or to be subscribed, voted, or pledged to either company by individuals, counties, townships, or towns in the same manner as each company could have done in the absence of consolidation.

5th. That the stock subscribed by individuals in Jackson, Johnson and Cass counties to the Pleasant Hill Company, as well as the subscriptions voted by the townships of Pleasant Hill, Polk and Austin, in Cass county, and by Van Buren township, in Jackson county, should be expended by the new or consolidated company within those counties, and on the line of the original Pleasant Hill Company's road "on the terms, conditions, and limitations upon which said subscriptions were voted to the capital stock of said Pleasant Hill Company."

After the consolidation, to wit, on January 4, 1871, the the president of the new company came before the county court and applied for the bonds due on the Van Buren subscription, and the court, after reciting in its order that "all the conditions in said *subscription* contained authorizing the issuance of said bonds have been complied with on the part of said company," entered its decree for the issue and delivery of the bonds.

The order is in the following words:

"*Lexington, Lake and Gulf Railroad Company.*

"Application for the issuance of Jackson county bonds.

"Now at this day comes John Reid, president of said railroad company, and moves the court to issue fifty thousand dollars of the bonds of said county under the provisions of the order of this court made at the September term, 1870, subscribing in behalf of Van Buren township fifty thousand dollars to the capital stock of said company, and the court, being satisfied that all the conditions in said subscription contained authorizing the issuance of said bonds have been complied with on the part of said company, orders and decrees that fifty bonds of the denomination of one thousand dollars each, in the name of Jackson county, for and in behalf of Van Buren township, in said county, be issued, said bonds all to be dated the 4th of January, 1871, all interest and principal payable in gold at the Bank of America, city and State of New York, and all bearing six per cent. interest per annum from date until paid; ten of said bonds to be made payable on the 4th day of January, 1887; ten thereof on the 4th day of January, 1888; ten thereof on the 4th day of January, 1889; ten thereof on the 4th day of January, 1890, and ten thereof on the 4th day of January, 1891; the interest upon all of said bonds to be made payable semi-annually, and each of said bonds to have thereto coupons for the semi-annual interest according thereon. And it is further ordered that the presiding justice of this court affix his signature as such presiding justice to each and every of said bonds, and that the clerk of this court affix his signature as such clerk to each and every of said bonds, as well as each and every coupon to said bonds attached, and that said bonds when so executed shall be delivered to John Reid, president of said railroad company."

The bonds were accordingly issued and delivered and are in the following form :

No. —. $1,000.

UNITED STATES OF AMERICA.

STATE OF MISSOURI, *County of Jackson.*

Issued pursuant to articles of consolidation in payment of stock due the Lexington, Lake and Gulf Railroad Company; consolidated October 4, A. D. 1870.

Know all men by these presents that the County of Jackson, in the State of Missouri, acknowledges itself indebted and firmly bound to the Lexington, Lake and Gulf Railroad Company in the sum of one thousand dollars, which sum the said County of Jackson, for and in behalf of Van Buren township therein, promises to pay in gold to said Lexington, Lake and Gulf Railroad Company or bearer, at the Bank of America, in the city and State of New York, on the — day of ——, A. D. 187–, together with interest in gold thereon from the — day of ——, A. D. 187–, at the rate of six per cent. per annum, which interest shall be payable semi-annually on the presentation and delivery at said Bank of America of the coupons of interest thereto attached—

This bond being issued under and pursuant to an order of the county court of Jackson county by virtue of an act of the General Assembly of the State of Missouri approved March 23rd, 1868, entitled "An act to facilitate the construction of railroads in the State of Missouri," and authorized by a vote of the people taken August 30th, 1870, as required by law, upon the proposition to subscribe fifty thousand dollars to the capital stock of the Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company, which said railroad company last aforesaid and the former Lexington, Chillicothe and Gulf Railroad Company were, on the 4th day of October, 1870, consolidated, as required by law, into one company, under the name of the Lexington, Lake and Gulf Railroad Company.

And which said last-named railroad company, as provided by law, and under the terms of said consolidation thereof, possesses all the powers, rights, and privileges, and owns and controls all the assets, subscriptions, bonds, moneys, and properties whatever of the two said several companies forming said consolidation or either one of them.

In testimony whereof the said County of Jackson has executed this bond by the presiding justice of the county court of said county, under the order thereof, signing his name hereto, and by the clerk of said court, under the order thereof, attesting the same and affixing the seal of said court. This done at the city of Independence, county of Jackson, this — day of ——, A. D. 187–.

—— ——,

Presiding Justice of the County
Court of Jackson County, Mo.

—— ——,

Clerk of the County Court of Jackson County, Mo.

$30. $30.

City of Independence,
Jackson County, Mo., —— —, *A. D.* 187–.

The County of Jackson acknowledges to owe the sum of thirty dollars in gold, payable to bearer, on the — day of ——, 18—, at the Bank of America, in the city and State of New York, for six months' interest on bond No. —.

—— ——,

Clerk County Court, Jackson County, Mo.

The bonds were sold for cash in open market and the proceeds were faithfully used in building the road as directed in the petition and the vote of the people. The plaintiff purchased before maturity and for value without knowledge of any defect or infirmity in the bonds. The road was graded and partially built, but work was suspended during the money panic of 1873, and it still remains uncompleted from the La Fayette county line to Pleasant Hill. From Pleasant Hill south to Carthage a railroad is now built and in full operation on the exact line indicated in the foregoing articles.

The bonds were dated January 4, 1871, and all the maturing coupons up to and inclusive of January 4, 1876, were paid by the people of the township, without objection, on tax levies made by the county court.

This suit is brought on the coupons maturing from July 4, 1876, to January 4, 1884, both inclusive.

The declaration or petition of the plaintiff alleges all the foregoing facts.

The case was submitted to the court under a waiver of jury and heard on the pleadings, the stipulations of counsel, and the testimony of witnesses. The court made a special finding of facts, which appears in the record between pages 42 and 55, inclusive.

All the substantial facts above recited were found by the court and judgment rendered for the plaintiff.

The defendant brings the case here for review on writ of error.

POINTS PRESENTED FOR ARGUMENT.

The questions most prominently presented for consideration here may be condensed and affirmatively stated as follows:

1st. That the Pleasant Hill Company having been organized for the declared purpose of consolidation with the Lexington, Chillicothe and Gulf Company, and with express provisions in its charter announcing that purpose, those provisions of the charter entered into and became a part of "the terms and conditions" on which the people of the township voted the proposition to subscribe and on which the subscription was actually made by the county court, and that the consolidated company because of this provision in its charter occupied the same relation to the township and to the county court as did the original or constituent company, and that the township by its vote contracted that the subscription and bonds might be made indifferently either to the Pleasant Hill Company or " to such company as it might consolidate with."

2d. That the order of the county court of September 6, 1870, operated as an absolute subscription of the stock to the Pleasant Hill Company, and the closing sentence of that order is justified and supported by the order itself, to wit: "Said subscription and sum of fifty thousand dollars to be delivered to said railroad company, or to such company as said Pleasant Hill Division of the Lexington, Chillicothe and Gulf Railroad Company may consolidate with, according to the terms and conditions of the petition in the matter of said decision and order and proceedings relative thereto heretofore made and filed in this court."

3d. That the oral proof adduced showed that this subscription was made at the instance and request of the said Pleasant Hill Company, and that the order of the court touching it was accepted and understood by both parties as a contract of subscription.

4th. That the recital in the order of the county court that the subscription was made "at the application of the company" is supported by the record evidence, and by all the facts in the case, and whether thus supported or not, it operates as an estoppel against the township in favor of innocent holders for value of the coupons sued on.

5th. That the recital in the order of September 6, 1870, to the effect that the fifty thousand dollars should be delivered to the Pleasant Hill Company "or to such company as it might consolidate with, according to the terms and conditions of the petition in the matter of said election and the orders and proceedings relative thereto heretofore made and filed in this court," is justified by the antecedent facts, and asserted nothing beyond the power or the duty of the court in the premises.

6th. That not only the board of directors, but the stockholders of the Pleasant Hill Company, in less than one month after the making of this order by the county court, and before consolidation, referred to the proceedings as constituting a valid subscription to its capital stock by Van Buren township, and they not only assumed ownership and control of it and conveyed it as such to the consolidated company, but directed the expenditure of the money by the new company, as set forth by the people of the several townships asking "for said vote and subscriptions."

7th. That whether, under the proceedings, we regard the Pleasant Hill Company and the consolidated company as occupying the same relation to the county court and to the people of the township, or whether we hold it necessary that the Pleasant Hill Company should have actually accepted the subscription before the consolidation, in either event the order of the county court of January 4, 1871, directing the issue and delivery of the bonds to the consolidated company was a proper and legal exercise of power by said tribunal.

> company organized to build a road 'passing through or near said township of Polk'" (quoting from the petition), "and that company's articles of association, in their second section, provided that it was intended 'eventually to consolidate with and form a link and be a part of the main line of the said Lexington, Chillicothe and Gulf railroad.' Without this connection it would have been a railroad beginning and ending in the open country."

The bonds were held valid, both judges concurring.

This Court, in still stronger language, (Harter *vs.* Kernochan, 103 U. S., 562), asserted the doctrine that where the charter contained specific authority to consolidate, the right to subscribe and issue bonds passed to the new company.

In that case a donation was voted in 1868 to the Illinois Southeastern Railway Company. The law required that the vote should be ordered on the application of the company. The records of the municipal authorities recited such application, and this is the only evidence of assent by the constituent company. The records show a delivery of the bonds to the Springfield and Illinois Southeastern Railway Company, a corporation formed in December, 1869, by the consolidation of the Illinois Southeastern Railway Company with the Pana, Springfield and Northwestern Railway Company. Taxes, as in this case, were levied and paid for five or six years.

Held by this Court:

> "The act incorporating the Illinois Southeastern Railway Company, the act amendatory thereof, and the act in relation to the Pana, Springfield and Northwestern Railway Company (even if the general statutes of the State were not sufficient for the purpose) fully authorized the consolidation between these two companies, and upon such consolidation the new company succeeded to all the rights, franchises, and powers of the constituent companies. The power in the township to make a donation to aid in the construction of the Illinois Southeastern railway was also a privilege of the latter corporation, and that privilege upon the consolidation passed to the new company. The donation was voted be-

fore the consolidation took effect, and since the consolidated or new company did not propose to apply such donation to purposes materially different from those for which the people voted in 1868, the right to receive the donation, at least when the township assented, cannot be doubted. The records of the township show that the bonds were directed to be issued and delivered to the new company, and it will not, under the circumstances, be allowed to say, as against a *bona fide* purchaser for value, that the bonds are invalid. There is consequently no pretext for saying that a burden was imposed upon the people to which they had never given their consent in the mode prescribed by law."

The same principle is maintained in Menasha *vs.* Hazard, 102 U. S., 95. The bonds there were voted to the Portage, Winnebago and Superior Railroad Company on June 4, 1870. The Portage, Stevens Point and Superior Railroad Company was then in existence, with express power to consolidate with the first-named company. These companies consolidated in February, 1871, under the name of the Wisconsin Central Railroad Company. On March 24, 1871, the Manitowoc and Minnesota Railroad Company was specially authorized to consolidate with the Wisconsin Central Company, and, on July 1, 1871, the two did consolidate, and on October 25, 1871, the bonds were made payable to the Wisconsin Central Company and delivered to said company. The records of the town authorities show that the proposition to subscribe was voted on the application of the constituent company, but they fail to show an actual subscription to any company or any acceptance or notice of acceptance to the town authorities. *Held* by this Court: "Upon this state of facts, we think this case is brought directly within the principles settled in *County of Scotland* vs. *Thomas*, 94 U. S., 682, and *Wilson* vs. *Salamanca*, 99 *id.*, 499. The authority of the Wisconsin Central Company was to consolidate with any other company that might at any time have the power to enter into such an arrangement."

In this case the people had the right under the law to fix the terms and conditions under which they voted the stock. They voted to subscribe to a company which not only had authority by law to consolidate generally with other companies, but was specifically required to consolidate with the Lexington, Chillicothe and Gulf Company. Such consolidation, indeed, was one of the declared objects of its creation. A vote, therefore, to the constituent company was equivalent to a vote to the consolidated company. The contract of the people was that we will vote the stock and bonds to the Pleasant Hill Company, but with the express understanding that it shall consolidate with a named company, and that the bonds when issued shall accrue to the benefit of a new company possessing all the powers, rights, privileges, and franchises of these two.

Under a similar statute in Michigan, Ypsilanti voted bonds to the Michigan Central Company, and it was urged against their validity that the terms prescribed in the vote were in violation of the statute, and this Court upheld the conditions and sustained the bonds.

Taylor *vs.* Ypsilanti, 105 U. S., 60.

The people of Van Buren township desired to have the Lexington, Chillicothe and Gulf road pass through Lone Jack, the principal town in said township. It could only be done in the way proposed. They understood what they were doing. They had a right to do what they did, and, having done it, they should certainly be required to comply with their agreement.

II.

In the pending case there was an actual subscription of the stock to the constituent company before consolidation.

This Court has held in numerous cases, and without a single exception, that in order to constitute a binding subscription of stock it is not necessary that there should be an actual manual subscribing on the company's books. If the municipal authorities make an order and enter it on their records declaring that stock is thereby subscribed, this of itself is an act of subscription, binding on the municipality as a subscriber, and entitling the company to payment for the stock so subscribed.

Nugent *vs.* Supervisors, 19 Wall., 241.
Cass County *vs.* Gillette, 100 U. S., 585.
Warren Township *vs.* Marcy, 97 U. S., 107.
County of Moultrie *vs.* Savings Bank, 92 U. S., 631.

To the same effect see—

Clark County *vs.* Paris Turnpike Co., 11 B. Mon., 143.
31 Penn. St., 174.
17 Ind., 318.
7 Cal., 419.

The order in this case is absolute and unconditional. It first recites the fact and date of election, the returns thereof, the sufficiency of the vote, the amount ordered to be subscribed and to what company, and then declares that "said subscription so voted, as aforesaid, of said sum of fifty thousand dollars by said township to the capital stock of said railroad company be had and made and entered of record, *and the said subscription is now made by this court* on behalf of and for said township of Van Burén as aforesaid." Stronger words could not have been used indicating the purpose to make actual, complete, and perfect subscription.

III.

If the court should hold that such an order of subscription on the books of the county court giving the constituent company the right to accept, without limitation as to time, is not such a "right" or "privilege" as may pass to the new company on consolidation, the case is still free from doubt, because the facts and circumstances in the case abundantly show actual acceptance and consent by the original company before consodidation.

The attorney and agent of the company prepared the order, presented it to the court, and asked its adoption. This order recites that the subscription was made "at the application of the company." If this be not sufficient, surely the action of the stockholders and directors of the constituent company in signing and filing, under the hands of the officers and the seal of the company, a declaration of ownership and control over this particular "subscription voted by Van Buren township," and assigning it to the new company as a part of the assets belonging to it, is sufficient.

The plaintiff in error is mistaken in supposing that the cases cited by him assert any principle that would avoid the bonds in this case.

In Marsh *vs.* Fulton County, 10 Wall., 676, the Legislature of Illinois had incorporated the Mississippi and Wabash Company, running from Warsaw to the eastern line of the State. It afterwards amended the charter, dividing the line into three divisions, and creating a separate company for each division. Held, that a subscription of stock and issue of bonds authorized upon a vote of the people to the original company could not be legally made to one of the three corporations.

In Harshman *vs.* Bates County, 92 U. S., 569, this Court simply reaffirmed the doctrine that, where a township subscription had been authorized by the requisite number of voters, if the company, before the subscription be actually made, becomes consolidated with another, the county is not authorized to subscribe the stock and issue bonds to the consolidated company.

In Bates Co. *vs.* Winters (97 U. S., 83) the only actual subscription shown was to the consolidated company. The stock had been originally voted to the Lexington, Chillicothe and Gulf Co., and Winters, the plaintiff, on the trial below, produced in evidence an order of the county court, which in terms would have amounted to a subscription to the original company but for the provision in the order that one Betts be appointed an agent under the following specific instructions, to wit: "And he is hereby authorized and directed to make said subscription on the stock books of said company, and in making said subscription he is ordered to have copied in full the orders made by this court on said 5th day of April, 1870, as the conditions on which the same is made, and that he report to this court his acts in the premises aforesaid."

The controlling question in that case was whether the first part of the order of the county court that "the sum of $90,000 be, and the same is hereby, subscribed as stock to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company," although coupled with the appointment of Betts as agent, amounted to a subscription. This is manifest from the opinion of the Court, where it is said: "the county court did not intend their action to be final and did not understand that a subscription was thereby completed. Their vote was a declaration that the power to subscribe should be exercised, and was an authority to their agent to perfect a contract with the railroad company on the conditions set forth. "No acceptance," says the Court, "was made by the railroad company, no notice of acceptance was given, *nor was there any act or fact which afforded a pretext for saying that the railroad company was bound by the contract of subscription.*"

The Court further said that while "it (the company) refused to allow the agent to withdraw his evidence of authority, it said nothing and did nothing to indicate that the minds of the parties had met upon the terms of the subscription. The county court was precise and particular in requiring those conditions to be copied in full on the books of the company as the condition on which the subscription was made, and there could be no mutual contract until the railroad company assented on its part to those conditions."

When the case of Winters came back to this Court (decided in 112 U. S., 325), the minute books of the original company had been found. From them it appeared that when Betts presented the order of the county court authorizing and directing him "to make said subscription on the stock books of said company," and in making said subscription that he should have the orders of the court copied in full on the books of the company, the company did spread the order of court on its minutes and passed the following resolution, *to wit*, "The orders of the county court of Bates county, after being read, were ordered by the board to be spread upon the record books of the company, and on motion the subscriptions made and specified in the aforesaid orders to the capital stock of the Lexington, Chillicothe and Gulf Railroad Company were accepted by the board of directors of said company."

It still remained in evidence, as when the case was formerly tried, that Betts, the agent, never did subscribe on the stock-books of the company, and that he reported to the court afterwards "that the company had no stock-books," and that for this and other reasons he did not make the subscription, and stating in his report "that the bonds of said township are, therefore, not subscribed," and that this report was formally adopted by the county court; but on January 18, 1871, the court, in an order, recited that a subscription had been made to the Lexington, Chillicothe and Gulf Company, that a consolidation had been since perfected, resulting in the Lexington, Lake and Gulf, and directing that the bonds be issued to the latter company in satisfaction of said subscription. The order concluded by authorizing the agent of the court to subscribe to the Lexington, Lake and Gulf Company, and the agent so made the subscription to the consolidated company. The bonds in this latter case were held to be valid.

IV.

Under the express statute law of Missouri and the repeated decisions of its courts, the act of Tilton Davis, the attorney and agent of the company, in declaring, as a matter of record, the company's assent to and approval of the order of subscription, is binding on the company even as between the original parties.

Parol contracts are binding upon aggregate corporations if made by a duly authorized agent, and contracts may be implied from corporate acts or from the acts of an agent whose powers are of a general character.

Gen'l Stat., 1865, Ch. 62, § 6 (Title "Private Corporations").

Wag. Stat., p. 290, § 8.

This section is only declaratory of what the law was before its passage.

Preston *vs.* Mo. and Penn. Lead Co., 51 Mo., 43.

Where persons deal with an officer or agent of a corporation who assumes authority to act in the premises, and no want of authority or irregularity is brought to the knowledge of the party so dealing with the corporation, and nothing occurs to excite suspicion of such defect, the corporation is bound though the agent may have exceeded his authority.

Lungstrass *vs.* German Ins. Co., 57 Mo., 107 (see 10 Wall., 644).

The acts of a corporation like those of an individual may be shown by parol where the charter does not require a different rule of evidence, and if the charter does not require the acts of the board of directors to be in writing they may transact their business by parol. It may act through authorized agents, and it is not necessary to prove their authority by the books of the company. (29 Mo., 68; 30 Mo., 118 and 452; 45 Mo., 419; 47 Mo., 425; 49 Mo., 380; 59 Mo., 514;

55 Mo., 201; supported by 17 Iowa, 276; 14 John., 118; 4 Ser. & R., 317; Dillon on Mun. Corp., § 383; 12 Wheaton, U. S. *vs.* Dandridge.)

The managing officer of a corporation has power to employ an attorney without authorization by the board of directors (45 Mo., 419), and any act, representation, or knowledge of an officer or agent of a corporation officially done, made, or acquired, if within the scope of his authority, is the act, representation, or knowledge of the corporation.

38 Mo., 228 (1866).

Every legal intendment is made in favor of the acts of a private corporation, and the burden of proof is on him who would show an irregularity in them.

State *vs.* Kupferle, 44 Mo., 154.

It is always presumed that a corporation may make any proper contract whose scope and tendencies are manifestly to forward the design of its creation.

Kitchen *vs.* Cape Girardeau and State Line R. R. Co., 59 Mo., 514.

V.

The words " powers," " rights," " privileges," and " immunities," had been defined and construed by the supreme court of Missouri before they were used in the statutes authorizing consolidation of railroad companies. Under that construction the power to subscribe by a municipality is a " right " or " privilege " of the original company, which passes by virtue of consolidation to the new company.

The first act of incorporation of a railroad in that State was passed by the Legislature in 1837 to construct a road from Louisiana, Mo., to the town of Columbia. It authorized the counties and towns through which it passed to subscribe stock.

From 1847 to 1865 numerous charters were granted, and in many of them, notably the Hannibal and St. Joseph and the North Missouri companies, only a few new sections were adopted, but each of them contained a general provision that the corporation "should possess" or "be entitled to all the privileges, rights, and immunities which were granted to the Louisiana and Columbia Railroad Company."

Marion county, on the line of the Hannibal and St. Joseph Company, having subscribed to that company, the county court refused the bonds, and on mandamus proceedings by the company to compel their delivery the supreme court held that the use of these words not only conferred on the county court the power to subscribe, but that it also conferred on the railroad company the power to receive the subscriptions.

H. & St. Joe R. R. Co. *vs.* Marion County, 36 Mo., 294 (1865).

In Smith *vs.* Clark County, 54 Mo., 58 (1873), the question was again presented. In chartering the Alexandria & Bloomington Company it was provided that that company should have the "privileges, rights, and immunities" of the North Missouri Company. The Missouri court in the same manner held that these words gave the "right" of subscription to the county courts and transferred to the corporation the "privilege" of receiving the stock.

To the same effect is the case of State *vs.* St. Joe & Iowa R. R. Co., 51 Mo., 522, and State *ex rel.* Att'y General, *vs.* Green County, 54 Mo., 540.

This Court has maintained the same principle in numerous cases:

"We concur with the court below in holding that the aid voted must be deemed to have been given in view of the then existing statute authorizing two or more railroad companies, forming a continuous or connected line, to consolidate and form one corporation, and investing the consolidated company with the powers, rights, property, and franchises of the constituent companies."

New Buffalo *vs.* Iron Company, 105 U. S., 73.

"When the consolidation took place there was a perfected *power* in the township to subscribe to the stock of that company, and there was also an existing *privilege* in the company to receive the subscription. That privilege, as we held in the Scotland County case, passed by the consolidation to the consolidated company."

Wilson *vs.* Salamanca, 99 U. S., 499.

"The power given to a municipal corporation to subscribe to the stock of a railroad company may be also a *right* and *privilege* of that company."

Tipton County *vs.* Locomotive Works, 103 U. S., 533.

"It is also established * * * that the consolidation of one railroad company with another does not extinguish the power of a county to subscribe or the privilege of the company to receive subscriptions."

Schuyler County *vs.* Thomas, 98 U. S., 169.
Scotland Co. *vs.* Thomas, 94 U. S., 682.

Bonds, reciting that they were issued by authority of law and a vote of the people, "are valid obligations of the township, although voted to one company and delivered to a corporation formed pursuant to law by the consolidation of that company with another."

Harter *vs.* Kernochan, 103 U. S., 562.

A railroad company was chartered by special act in Illinois, with power by townships, on a vote of the people, to subscribe to it stock not exceeding $250,000. A township did vote and subscribe $50,000. After this subscription the company consolidated with another, under a law then existing, authorizing consolidations and providing that the new company shall have "all the powers, franchises, and immunities" of the constituent companies. After consolidation, the township voted and made an additional subscription. This Court held that the power to subscribe the new stock was a right and privilege which passed to the new company under the general consolidation law of the State.

Empire *vs.* Darlington, 101 U. S., 87.

VI.

The Township is Estopped from Asserting the Invalidity of the Bonds Involved in this case.

The bonds recite, substantially, the following facts:

1st. That they were issued under the township aid act of March 23, 1868, and pursuant to an order of the county court.

2d. That they were authorized by the necessary vote of the people of Van Buren township, taken as required by that act.

3d. That the vote was taken August 30, 1870, on a proposition to subscribe $50,000 to the capital stock of the Pleasant Hill Division of the Lexington, Chilicothe and Gulf Railroad Company.

4th. That the said company consolidated, on October 4, 1870, as required by law, with the Lexington, Chillicothe and Gulf Company, forming the Lexington, Lake and Gulf Company.

5th. That said consolidated company, as provided by law and under the terms of the agreement between the constituent companies, became possessed of "all the powers, rights, and privileges, and owns and controls all the assets, subscriptions, bonds, moneys, and properties of the two said several companies forming the said consolidation."

6th. That the bonds were issued "under and pursuant to an order of the county court of Jackson county," as authorized by the act of March 23, 1868, and by the statutes authorizing the consolidation of the two companies named.

The bond itself, it is true, refers to but one order of the county court. The records show two orders, one made September term, 1870, the other at the January term, 1871. The former order effected an actual subscription of the stock to the constituent company. The latter, after reciting the order of September, 1870, and declaring that "all the conditions in said subscription contained authorizing the issuance of said bonds have been complied with," &c., directed the issue of the bonds to the new company. A reference in the bond, therefore, to the latter order included reference to the former order.

The plaintiff in error objects to this latter order because it recites a subscription to the consolidated company. The caption or heading of this order is, "*Lexington, Lake and Gulf Railroad Company.*" The body of the order proceeds to recite that Reid, president of said company, "moves the court to issue fifty thousand dollars of the bonds of said county under the provisions of the order of this court made at the September term, 1870, subscribing, in behalf of Van Buren township, fifty thousand dollars to the capital stock of said company." It is argued that "said company" refers to and means the consolidated company. This is not altogether certain. The court had, immediately before this, recited the order of September, 1870, and "said company" may well refer to the company mentioned in that order, to wit, the Pleasant Hill Company. If, however, the reference be to the consolidated company it is clearly a mistake—a mistake patent on the records of the court and incapable of misleading any one seeking information touching the issue of the bonds. It is a self-correcting mistake—the improper use of a single word in stating the substance of a previous order, which order is by the court expressly referred to, and when examined clearly speaks for itself. *Falsa demonstratio non nocet.*

Smith *vs.* Clark Co., 54 Mo., 58.
Ranney *vs.* Baeder, 50 Mo., 600.
Commissioners of Johnson Co. *vs.* January, 94 U. S., 202.
Jordan *vs.* Cass Co., 3 Dillon, 245.

The law of *estoppel* applies to township bonds equally as to county bonds in Missouri. A county there is not a corporation, but a political subdivision; so is a township.

Reardon *vs.* St. Louis Co., 36 Mo., 560.
Steines *vs.* Franklin Co., 48 Mo., 167, 188.

The county court was authorized by law to issue railroad bonds for both. Certain prerequisites were necessary in each case. A two-thirds vote was essential in both cases, and in both cases it was the province of the county court to order the election, to canvass the vote, and to declare the result. Why should not recital be as effectual in one case as in the other? Such was the rule of decision in the Missouri courts when the bonds in controversy were made.

Ranney *vs.* Baeder, 50 Mo., 600.

The county court was made judge of all the antecedent facts necessary to the validity of the bonds. If those necessary facts were expressly or impliedly recited on their face they are unimpeachable in the hands of an innocent purchaser.

The plaintiff in error admits express recital of all the necessary facts except the assent of the constituent company to the subscription before consolidation. That fact is impliedly recited by reference to the order of the county court, which declares the subscription to have been made on the application of said company. Actual notice of acceptance could only have been given by the company to the county court. Plaintiff substantially admits that if such notice had been given the bonds would be valid. If the county court admits such notice on its records, what more should be asked?

If a purchaser had examined the records for information he would have found a petition by fifty-eight resident taxpayers instead of twenty-five, as required by law. He would have found an order of election, then an election, a canvass of the vote, a subscription of stock to the constituent company, and record evidence of the company's assent thereto. He would have found a charter provision in the company expressly authorizing and requiring a consolidation with a designated company, an actual consolidation as authorized both by law and the provisions of the company's charter, and, finally, an issue of the bonds in the form and for the precise purposes required by the proceedings.

The bonds were purchased in good faith, the money paid to the company and expended on the line of road sought by the people of the township, and then for five years the people paid tax levies to take up ten installments of interest.

Is it possible that any principle of honest dealing can be invoked to avoid these securities?

Jordan *vs.* Cass Co., 3 Dillon, 245, 185.
Moultrie Co. *vs.* Savings Bank, 92 U. S., 631.
Oregon *vs.* Jennings, 119 U. S., 74.
East Lincoln *vs.* Davenport, 94 U. S., 801.
Nugent *vs.* Supervisors, 19 Wall., 241.
County of Tipton *vs.* Locomotive Works, 103 U. S., 538.
Harter *vs.* Kernochan, 103 U. S., 562.
New Buffalo *vs.* Iron Co., 105 U. S., 73.
Walnut Township *vs.* Wade, 103 U. S., 683.
Marcy *vs.* Oswego Township, 92 U. S., 637.

VII.

The plaintiff in error makes objection that the people of the township, when voting, thought they were to have a road from Chillicothe on the north instead of Lexington and that neither company was authorized to build to Chillicothe. This is absurd.

The people voted the stock to the Pleasant Hill Division, of the Lexington, Chillicothe and Gulf Company. The route and length, the beginning and terminus, of its road were specifically stated and defined in its articles of association. These were on record in the secretary of state's office.

No doubt it was intended that the road should ultimately extend from Chillicothe to the Gulf of Mexico. The name of the company itself indicates as much, and the articles of consolidation repeat that design.

By the simple filing of articles with the secretary of state and then consolidating, roads may be built not only throughout Missouri, but through the entire Western States.

The name given to the consolidated company indicates an ultimate purpose to extend the road to the lakes on the north and to the gulf on the south.

The facts of the case show that the people of the township knew perfectly well what they wished to accomplish, and that they adopted the appropriate means to attain their desires. They continued to pay the coupons without objection until they heard that all township bonds were void, and, for the first time, reasons for repudiation were sought for.

VIII.

The unreported case of Livingston County vs. The Portsmouth Bank Examined.

After preparing much of the above brief the opinion of this Court was filed in County of Livingston *vs.* National Bank of Portsmouth, No. 195 of the present term.

In that opinion an able and elaborate review is made of all the cases previously decided by the Court affecting township subscriptions and the consolidation of railroad companies.

The township of Chillicothe voted to make a subscription to the Chillicothe and Omaha Railroad Company, under the act of 1868, to be paid in what are termed in Missouri township bonds. This was in May, 1870. Returns of the election were made and canvassed and an abstract thereof entered on the records of the court. There was no order of court subscribing the stock and no actual subscription of stock on any books of the company, and no evidence of acceptance thereof by the constituent company.

In September, 1870, the Chillicothe and Omaha Company at a meeting of its stockholders resolved to consolidate with an Iowa company which had just been organized with power to build from the Missouri boundary to Council Bluffs and Omaha. The consolidation articles provided for a company with power to build from Chillicothe to Omaha under the name of the St. Louis, Council Bluffs and Omaha Railroad Company.

Bonds were issued by the presiding judge and clerk of the county count in April, 1871, payable to the consolidated company, and this company used them in building the line of road covered by the charter of the constituent company.

The people on tax levies paid the maturing coupons up to and inclusive of those due July 1, 1876. In February, 1877, the county court, by its order admitting that it had previously issued the bonds, proceeded to declare them void on the authority of the Harshman case, decided by this Court, and a subsequent ruling of Circuit Judge Dillon.

Among the objections assigned were the following:

1st. That the authority to subscribe to the Chillicothe and Omaha Company was not an authority to subscribe stock in or issue bonds to the St. Louis, Council Bluffs and Omaha Railroad Company.